TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~366~~ 180

WELLS, FARGO & COMPANY, PLAINTIFFS IN ERROR,

vs.

OLIVE L. GARDNER.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED DECEMBER 19, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 396.

WELLS, FARGO & COMPANY, PLAINTIFFS IN ERROR,

vs.

OLIVE L. GARDNER.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

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1 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the judges of the Supreme Court of the Territory of Utah, greeting:

Because in the record and proceedings, as also in the rendition of judgment in a plea which is in the said Supreme Court before you, between Wells, Fargo & Co., a [a] corporation, plaintiffs in error herein, and Olive L. Gardner, defendant in error herein, a manifest error hath happeared, to the great damage of the said plaintiffs in error herein as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf. You are hereby commanded, if judgment be thereupon given, that then under your seal, distinctly and openly, you send the record and proceedings therein, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city, D. C., on the third (3) Monday
2 of December next, A. D. 1868, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further thereon to be done to correct that error, what of right, and according to the law and custom of the United should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 19th day of November, A. D. 1868, and of the independence of the United States of America the ninety-third,

[SEAL.] W. J. APPLEBY,
Clerk U. S Supreme Court for the Territory of Utah.

Endorsed: In error. In the Supreme Court of the United States. Wells, Fargo & Co., pl'ff *vs.* Olive L. Gardner, def't. Writ of error. Filed Nov. 19, A. D. 1868. W. J. Appleby, clerk.

3 In the Supreme Court of the United States of America.

WELLS, FARGO & Co.
vs.
OLIVE L. GARDNER. } In error.

TERRITORY OF UTAH, *County of Salt Lake, ss:*

Theo. F. Tracy, agent of the above named plaintiffs in error, being duly sworn deposes and says, that the writ of error in the above named case is not sued out by plaintiffs for the purpose of delay or vexation, but in good faith, and for the purposes of justice, as he verily believes; that the amount in controversy is over twelve thousand dollars.

THEO. F. TRACY.

Sworn to and subscribed before me this 19th day of Nov'r, A. D. 1868.

[SEAL.] W. J. APPLEBY,
Clerk U. S. Supreme Court for the Territory of Utah.

Endorsed: In the Supreme Court of the United States. Wells, Fargo & Co, vs. Olive L. Gardner. Affidavit of merits. Filed November 19, 1868. W. J. Appleby, clerk.

4 Copy of power of attorney from Wells, Fargo & Co., authorizing Theodore F. Tracy to give and execute bond, &c., in the case of Wells, Fargo & Co., appellants, vs. Olive L. Gardner, appellees, to wit:

Know all men by these presents, that Wells, Fargo & Company, a corporation created by and existing under a law of the Territory of Colorado, and having its principal office in the city of New York, has made, constituted and appointed, and by these presents do make, constitue and appoint Theodore F. Tracy its true and lawful attorney for it, and in its name, place and stead, to sign, seal, execute and deliver any bond, stipulation or security which may be necessary, or in his opinion expedient, in order to secure or perfect any appeal from or stay of execution upon a judgment recovered in an action now or lately pending in the third District Court of Utah, wherein Olive L. Gardner is plaintiff, and said Wells, Fargo & Company is defendant, or any and all bonds, stipulations and securities which may be required, or in his discretion expedient to be given, for the purposes of the defence or conduct of said action in any way, and if necessary to procure and indemnify sureties upon such bonds or other securities, giving and granting unto its said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises,
5 as fully to all intents and purposes as it might or could do if personally present, with full powers of substitution and revocation, hereby ratifying and confirming all that its said attorney, or his substitute shall lawfully do, or cause to be done by virtue hereof.

In witness whereof the said Wells, Fargo & Company has caused its official seal to be hereto affixed by the hand of its vice president, the 22d day of September, in the year one thousand eight hundred and sixty-eight.

[SEAL.] (Signed) WELLS, FARGO & CO.,
By A. H. BARNEY, *V. Pres't.*

Sealed and delivered in the presence of—
Attest: GEO. R. OLES, sen.
NATHANIEL GILL.

Acknowledgement endorsed on said power of attorney, to wit.

STATE OF NEW YORK, *City and County of New York, ss:*

I hereby certify that on the 22d day of September, A.D. 1868, at the city of New York, before me a commissioner for the Territory of Utah, duly commissioned, personally came A. H. Barney, to me known to be the vice president of Wells, Fargo & Company, and to be the same person who subscribed the foregoing instrument as such vice president, who being by me duly sworn, did say that Wells,
Fargo & Company was then a corporation, and that he was
6 the vice president thereof; that he knew the corporate seal of
said corporation, and that the seal affixed to the foregoing instrument was such corporate seal, and that he affixed it thereto in pursuance of a resolution of the board of directors of said company, and that by the same authority he subscribed to said instrument the name of said corporation, and his own name as vice president thereof.

In witness whereof I have hereunto set my hand and affixed my official seal this 22d day of September, A. D. 1868.

[SEAL.] (Signed) NATHANIEL GILL,
Commissioner for Utah in New York.

[50-cent. int. rev. stamp, cancelled, Sep't 22. '68.]

TERRITORY OF UTAH, *City and County of Salt Lake, ss:*

I, W. J. Appleby, clerk of the Supreme Court, in and for the territory of Utah, do certify that the foregoing is a true and correct copy of the power of attorney from Wells, Fargo, & Company, by its vice president, A. H. Barney, to Theodore F. Tracy, with the signatures, seals, revenue stamps, &c., affixed, as filed November 19, 1868, and remaining in my office.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court at my office in S. L. City, Nov. 23d, A. D. 1868.

[SEAL.] W. J. APPLEBY, *Clerk.*

7 In the Supreme Court of the United States.

Copy of bond.—Filed in said cause.

WELLS, FARGO & Co.
vs.
OLIVE L. GARDNER. } In error.

Know all men by these presents, that we, Wells, Fargo & Co., as principal, by Theodore F. Tracy, its attorney-in-fact, and Horace S. Eldridge, and Warren Hussey, sureties, are held and firmly bound unto Olive L. Gardner, in the sum of twenty-six thousand dollars, lawful money of the United States of America, to be paid to the said Olive L. Gardner, her executors, administrators or assigns, for

which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, severally and jointly, firmly by these presents.

Sealed with our seals, and dated the nineteenth (19th) day of November, A. D. one thousand eight hundred and sixty-eight.

The condition of the above obligation is such that whereas the above named Wells, Fargo & Co. hath prosecuted a writ of error to the Supreme Court of the United States of America to reverse the judgment rendered in the Supreme Court of the territory of Utah, in a suit wherein the said Wells, Fargo & Co. are appellants, and the said Olive L. Gardner, appellee, on appeal in said Supreme Court
of the Territory of Utah from the District Court of the third
8 judicial district of said territory.

Now, therefore, the condition of this obligation is such, that if the above named Wells, Fargo & Co. shall prosecute its said writ to effect, and answer all damages and costs, together with just damages for delay if they fail to make good its plea, then this obligation to be void; otherwise the same shall be and remain in full force and vi tue, then the above obligation to be void, otherwise to remain in full force."

[SEAL.] (Signed) WELLS, FARGO & Co.
By THEO. F. TRACY.
Att'y-in-fact.

[SEAL.] H. S. ELDRIDGE.
[SEAL.] WARREN HUSSEY.

Signed, sealed and delivered in presence of—
THOMAS MARSHALL.
E. S. DAVEY.

And endorsed below the signatures as follows:

"This bond is this 19th day of November, A. D. 1868, approved by me at chambers, at Salt Lake City, U. T.

(Signed) C. C. WILSON,
Chief Justice of the Supreme Court, U. T.

Endorsed: In the Supreme Court United States. Wells, Fargo & Co. To Olive L. Gardner. Supersedeas bonds dated Nov. 19th, 1868. Filed Nov. 19th, 1868. W. S. Appleby, clerk."

9 TERRITORY OF UTAH, *City and County of Salt Lake, ss:*

I, W. J. Appleby, clerk of the Supreme Court for the Territory of Utah, do certify, that the foregoing is a true and correct copy of the "supersedeas bond of Wells, Fargo & Co., to Olive L. Gardner with the signature. Approval of the chief justice, endorsement therein filed November 19th, 1868, and remaining on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in S. L. City, U. T., Nov. 23d, 1868.

[SEAL.] W. J. APPLEBY, *Clerk.*

10 In the Supreme Court of United States of America. In error to the Supreme Court of Utah Territory.

WELLS, FARGO & Co., pl'ff in error,
ads.
OLIVE L. GARDNER, def'd't in error.

The clerk will please issue writ of error to the Supreme Court of Utah Territory in the above-entitled cause, returnable to the Supreme Court of the United States on the third Monday of December, A. D. 1868.

Nov. 19th, 1868.

MARSHALL & CARTER, &
C. H. HEMPSTEAD,
Att'ys for Pl't'ff in error.

Endorsed: Supreme Court of the U. S. Wells, Fargo & Co., pl't'ff in error, ads. Olive L. Gardner, def'd't in error. Precipe for writ of error. Filed November 19th, A. D. 1868. W. J. Appleby, cl'k. Marshall & Carter, and C. H. Hampstead, att'ys for pl't'ff in error.

11 In the Supreme Court of the United States.

Plaintiff's assigment of errors

WELLS, FARGO & Co.
vs.
OLIVE L. GARDNER.

UNITED STATES OF AMERICA *ss* :

The said plaintiff in error, Well, Fargo & Co., a corporation, complains of the said defendant in error, Olive L. Gardner, for that the said Olive L. Gardner, at the October term, A. D. 1868, of the Supreme Court of the territory of Utah, on the 14th day of November, A. D. 1868, recovered a judgment by the consideration of said court against the said plaintiff in a certain appeal then pending in said court wherein the said Wells, Fargo & Co. were appellants and the said Olive L. Gardner appellee, a copy of the record and proceedings in which case duly certified is hereto attached. And the said Wells, Fargo & Co. avers that there is error in the said record and proceedings, in this, to wit:

The court erred in affirming the judgment of the District Court of the third judicial district territory of Utah, and in not reversing the said judgment.

For that the said District Court erred in this, to wit:

12 First. The court erred in permitting Dr. W. H. Anderson to testify as to the mental condition of the defendant in error nearly two months after the execution of the release pleaded. One of the issues being as to her insanity at the time of the execution of the said release, as set forth in the first bill of exceptions.

Second. The court further erred in permitting Drs. Sprague and Berkhierd to testify as to mental condition of defendant in error nearly two months after the execution of the deed of release. The question of damages not being in issue in this cause under the pleadings as appears from the second bill of exceptions.

Third. The court further erred in rejecting the testimony of Theodore F. Tracy, as to the fraudulent representations of the defendant in error in June or July, just prior to the injuries received by defendant in error, and the settlement of the same, and as is more fully set forth in the third bill of exceptions.

Fourth. The court further erred in giving the first instruction asked by defendant in error, because it is not correct in law, and finds a plea of estoppel which was filed in the cause as appears from the fourth bill of exceptions.

13 Fifth. The court erred in giving the second instruction asked by defendant in error, because it tended to mislead the jury by its qualifications of the definition of desution, and improperly casts upon the plaintiffs in error the burden of proof of continuance of desution after it had once been established, as set forth in pl'ff's fifth bill of exception.

6th. The court erred in refusing the 11th and 12th instructions asked by plaintiff in error, because a plea in estoppel having been filed and issue joined thereon, the question of damages should not have been submitted to the jury, as set forth in the eighth bill of exceptions.

Seventh. The court further erred in refusing the 14th instruction asked by the plaintiff in error, as set forth in the 9th bill of exceptions.

And the said Supreme Court further erred in allowing said defendant in error ten per cent. interest upon said judgment so rendered as aforesaid on the 14th day of November, A. D. 1868.

Wherefore the said Wells, Fargo & Co., plaintiffs in error, herein pray that the said judgment may be reversed and the said plaintiff restored to all things he has lost by reason thereof.

14 WELLS, FARGO & CO.,
By MARSHALL, CARTER &
C. H. HEMPSTEAD.
Their att'ys.

15 Let the writ of error herein issue.
Given under my hand this twentieth day of Nov'r, A. D. 1868.
C. C. WILSON,
Chief Justice Supreme Court
of the Territory of Utah.

In the Supreme Court of the United States. In error. Wells Fargo & Co. vs. Olive L. Gardner. Assignment of errors. (fr. record) Filed Nov'r, 19th, A. D. 1868. W. J. Appleby, Clerk.

16 UNITED STATES OF AMERICA, *ss*:

To Olive L. Gardner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington City, D. C., on the third Monday in December next, A. D. 1868, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Territory of Utah, wherein Wells, Fargo & Co. are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. C. Wilson, chief justice of the Supreme Court of the Territory of Utah this 19th day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

C. C. WILSON,
Chief Justice of the Supreme Court of the Territory of Utah.

Attest: W. J. APPLEBY, *Clerk.*

17 TERRITORY OF UTAH, *County of Salt Lake, ss:*

James M. Carter, being duly sworn, deposes and says that he is one of the counsel of the plaintiff in error in the within citation; that on the 21st day of Nov'r, A. D. 1868, he served the same by reading the within to, and leaving a true copy thereof with, L. A. Baskin, one of the att'ys of said def't in error.

JAMES M. CARTER.

Subscribed and sworn to before me this 21st day of November, A. D. 1868.

[SEAL.] W. J. APPLEBY,
Cl'k U. S. Supreme Court, U. T.

Endorsed: Wells, Fargo & Co. vs. Olive L. Gardner. In error. Citation. Served this 21th day of Nov'r, A. D. 1868, by reading the within citation to, and leaving a copy with Ret. Baskin, one of the att'ys of record of the def't in error therein. James M. Carter of counsel for pl'ffs.

18 Transcript of the record and proceedings had before the Supreme Court in and for the Territory of Utah, in the case of Wells, Fargo & Co., appellants vs. Olive L. Gardner, appellee. Regular October term, A, D. 1868.

OCT. 30.

Transcript of record and proceedings had in the District Court in and for the 3d judicial district, for the territory of Utah, in the cause of Olive L. Gardner vs. Wells, Fargo & Co., was filed in this court by J. M. Carter, esq., one of the attornies for the appellants, "Wells, Fargo & Co."

NOV. 6TH.

Appellants' counsel filed a motion for an order to issue to court below, to date and seal said transcript sent up from court below; (motion afterwards withdrawn, see Nov. 9.)

"Same day Messrs. Baskin, and DeWolfe and Stent, attorneys for the appellee in said cause, filed a 'motion to strike certain papers from transcript' in the following words and figures, to wit:"

In the Supreme Court of Utah Territory.

WELLS, FARGO & Co, appellants,
vs.
OLIVE L. GARDNER, appellee.

And now comes the said Olive L. Gardner, by her attorneys, and moves to strike out the transcript herein filed, "the agreement of release," "the instructions to the jury on the part of the plaintiff," and the instructions on the part of the defendant" set forth
19 in said transcript and designated as above for the following reasons, to wit:

Because they constitute no part of the record of the case, not having been incorporated into any bill of exceptions or filed in the court below, or by said court ordered to be made a part of the record.

And the said Olive L. Gardner, by her said attornies, also moves to strike out of said transcript the bill of exceptions set forth therein, for the following reasons, to wit:

1st. (First.) It does not appear that said bill was ever filed in the court below.

2d. (Second.) No order appears upon the journals making it a part of the record, and ordering the same to be filed.

3d. (Third.) Said bill does not appear to have been made out and signed at the time of trial, or that it was signed 'nunc pro tunc,' but to the contrary, it appears that it was settled and signed on the 28th day of October, 1868, thirty-nine days after the rendition of the judgment, without it anywhere further appearing that the appellant or its attornies, at or after the trial, in the court below, or at or after the overruling of the motion for a new trial, asked for time in which to make out the said bill of exceptions, or that any time was granted or fixed by the court in which to settle and sign the same, or that any agreement was made in relation thereto, or that there is any rule of court, or authority of law allowing such delay, or that any one for the appellant, at or soon after the trial, or at or soon after the
20 motion for a new trial was overruled, gave any notice, or did anything to show that the appellant intended to rely upon exceptions, and not to waive the same. Nor does it appear that said bill was presented and signed during the term of the court at which the judgment was rendered.

For the above reasons said bill of exceptions and the above-named papers are no part of the record, and cannot be regarded by this

court; they only incumber the record and increases cost, and should be stricken from the transcript.

(Signed) BASKIN & DE WOLFE & STENT,
Att'ys for the Appellee.

And endorsed as follows: Wells, Fargo & Co. vs. Olive L. Gardner. Motion to strike certain papers from transcript. Filed in the office of the clerk of the Supreme Court for Utah T'y. Nov'r 6th, 1868. (Signed) W. J. Appleby, clerk.]

21 THE CASE OF WELLS, FARGO & Co., appellants,
vs.
OLIVE L. GARDNER, appellee.

Nov. 9, 1868.

On an appeal from the District Court in and for the third judicial district for the Territory of Utah, the transcript and record of proceedings in the case had in the lower court having heretofore been filed in this court, (Oct. 30, '68,) was called.

C. H. Hempstead, esq., one of the counsel for the appellants in said cause, asked leave of the court to withdraw a written motion heretofore filed, (Nov. 6,) in said case, to have the transcript and record of proceedings sent up from the court below sent back to said court for dating and sealing, which said transcript and record of proceedings had been dated and sealed by the clerk of said lower court, by the consent of the opposite counsel for the appellee, since the filing of said motion.

Court granted the request; motion withdrawn.

Mr. Baskin, attorney for the appellee in said cause, called up the motion heretofore filed in said case, (Nov. 6,) to strike out certain parts of the record sent up from below; which motion was argued by Mr. Baskin for the appellee, and by Mr. Marshall for the appellants.

The court, after hearing the argument of the respective parties' counsel, overruled the motion, but giving the appellee the
22 privilege of applying for an order from this court to have the said record sent back to the court below for correction, or the counsel of the respective parties might agree between themselves in relation to the matter, and submit the same to the court.

Whereupon the counsel for the respective parties submitted the following agreement in writing to the court, which the court approved, and ordered the same to be filed and recorded upon the journal of this court, to wit:

"In the Supreme Court of the Territory of Utah."

"WELLS, FARGO & Co., appellants,
vs.
"OLIVE L. GARDNER, appellee. } Oct. term, A. D. 1868."

"Upon agreement by counsel of parties in open court, it is hereby ordered that the record of the District Court herein be amended so

as to show that the 'bill of exceptions' therein was filed in the court below, on the day of the signing of the same by the judge below, to wit, on the 28th day of October, A. D. 1868; and the clerk of this court is hereby ordered to insert the same upon said bill of exceptions, which was accordingly done."

And thereupon the parties, by their respective counsel, submitted the case on the record and briefs to the court.

23 1868, Nov'r 14.

In the case of "Wells, Fargo & Co.," appellants, vs. Olive L. Gardner, appellee, heretofore submitted to the court by the respective parties, counsel, on the record and briefs, the court delivered the following opinion, (parties present by counsel,) to wit:

"It is ordered and decreed by this court that the judgment rendered by the court below in favor of the said Olive L. Gardner vs. the said 'Wells, Fargo & Co.,' be and the same is hereby affirmed with interest thereon, at the rate of ten per cent. per annum, and the costs accruing in this court.

Justice Hoge delivering the opinion of the court, Chief Justice Wilson concurring, Justice Drake dissenting.

It is therefore ordered, adjudged and decreed by this court, that the said Olive L. Gardner, appellee, have and recover of and from the said Wells, Fargo & Co., appellants, her costs in this behalf expended in this court, taxed at seventeen dollars and twenty cents, and that execution issue therefor.

"Marshall & Carter," counsel for the appellants in said cause excepted to the ruling and decree of the court in relation to the matter of allowing ten per cent. per annum interest on said judgment, and gave notice, then and there, that the appellants will sue out a writ of error from the Supreme Court of the United States, at Washington city, D. C.

24 Mr. Baskin, one of the counsel for the appellee in the above entitled cause, filed a motion for an execution to issue on the judgment affirmed by this court, in favor of the said Olive L. Gardner against the said Wells, Fargo & Co., appellants, to wit:

"In the Supreme Court of Utah Territory.

"WELLS, FARGO & Co., appellants,
vs.
OLIVE L. GARDNER, appellee.

"Now comes the said appellee by her attornies, and moves the court to issue, in pursuance of the 8th section of an act of the legislature of Utah, providing for appeals to this court, approved Jan. 18th, 1861, a special mandate to the clerk of the court below, ordering execution to issue in said case, for the following reason, to wit:

"Because the appeal bond filed herein is insufficient in law, and does not stay execution.

"1st. Because the same was filed before the appeal was taken.

"Second. It was not filed within the time ordered by the court, and is not in the amount required by law.

"3d. Because it is not legally sealed, there being no impression on wax, wafer or other tenacious substance.

"4th. Because the seal of Wells, Fargo & Co. is not attached to it.

"5th. Because the seal of said corporation is not legally attached to the power of attorney under which said bond was executed."

25 (Signed) BASKIN & DE WOLF,
Att'ys for Appellee.

Nov. 14, 1868.

Endorsed: Wells, Fargo & Co. vs. Olive L. Gardner. Motion for execution. Filed November 14th, A. D. 1868. (Signed) W. J. Appleby, Clerk.

Which said motion was argued by Mr. Baskin for the appellee, and by Mr. Hempstead, for the appellants. The court overruled the motion, the law being adequate in the matter.

And thereupon the court adjourned.

26 WELLS, FARGO & Co., plaintiffs in error,
vs.
OLIVE L. GARDNER, defendant in error.

Nov. 19, 1868.

From the Supreme Court of the United States at Washington City to the Supreme Court in and for the Territory of Utah, by their attornies, Marshall & Carter and C. H. Hempstead, esqs., filed an affidavit on the part of the plaintiffs in error, made by Theodore F. Tracy, agent of the said plaintiffs in error, stating that the writ of error in the above-entitled cause is not sued out by plaintiffs for the purpose of "delay or vexation, but for the [pur-] purposes of justice, as he verily believes."

Same day. Plaintiffs in error filed their supersedias bond in the sum of twenty-six thousand dollars, ($26,000 00-100,) approved by the Hon. Charles C. Wilson, chief justice of the Supreme Court in and for the territory of Utah, with power of attorney from plaintiffs in error, authorizing Theodore F. Tracy to give and execute said bond.

Same day. Plaintiffs in error, by their attornies aforesaid, filed a precipe for a writ of error to issue in said cause.

Same day. A writ of error in said cause was allowed and issued under the seal of this court, and the attestation of the clerk thereof, and the same made returnable to the Supreme Court of the United States at Washington City, D. C., on the third (3d) Monday of December next, A. D. 1868.

Endorsed: Filed Nov'r 19th, A. D. 1868. Signed, W. J. Appleby, clerk.

27 Same day, (Nov. 19th.) A copy of said writ of error, duly certified, was lodged in the clerk's office of this court by Messrs. Marshall & Carter and C. H. Hempstead, esqs., attornies for the plaintiffs in error aforesaid, for the said Oliver L. Gardner, defendant in error aforesaid.

Endorsed as follows, to wit: Wells, Fargo & Co. vs. Olive L. Gardner. Copy of a writ of error lodged, in pursuance of the statute of the United States in such case made and provided, for the above-named Olive L. Gardner, defendant in error. Nov. 19th, 1868. Signed, Marshall & Carter, and C. H. Hempstead, att'ys for plaintiffs in error.

Same day. Plaintiffs in error, by their attornies aforesaid, filed their "assignment of errors" (in duplicate) in said cause, with the chief justice's (C. C. Wilson) order endorsed thereon for writ of error to issue.

Nov. 21.

A "citation" to the defendant in error in said cause, issued Nov. 19, '68, and signed by the Hon. Charles C. Wilson, chief justice of the Supreme Court for the Territory of Utah, was this day filed by James M. Carter, esq., one of the attornies for the plaintiffs

28 in error, and made the following affidavit of service, endorsed thereon, to wit:

TERRITORY OF UTAH, *County of Salt Lake, ss*:

"James M. Carter," being duly sworn, deposes and says, that he is one of the counsel of the plaintiffs in error in the within citation; that on the 21st day of November, A. D. 1868, he served the same by reading the within to, and leaving a copy thereof with, R. N. Baskin, one of the attornies of said defendant in error.

(Signed) JAMES M. CARTER."

Subscribed and sworn to before me the 31st day of November, A. D. 1868.

[SEAL COURT.] (Signed) W. J. APPLEBY,
Clerk S. Court for U. T.

TERRITORY OF UTAH, *City and County of Salt Lake, ss*:

I, W. J. Appleby, clerk of the Supreme Court in and for the Territory of Utah, do certify that the within and foregoing contains and is a true and correct copy of the record and proceedings had before the said Supreme Court, (regular October term, A. D. 1868,) in the case of Wells, Fargo & Co., appellants, vs. Olive L. Gardner,

29 appellee; also of the power of attorney to Theodore F. Tracy, and supersedeas bond, as remaining of record and on file in my office, together with the original papers filed by said Wells,

Fargo & Co. for a writ of error to the Supreme Court of the United States at Washington City, D. C., in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Salt Lake City, U. T., November 25th, A. D. 1868.

[SEAL.]

W. J. APPLEBY,
Clerk S. Court for U. T.

30 In the Third District Court of Utah Territory for the Territory.

Transcript in appeal. Complaint. Olive L. Gardner vs. Wells, Fargo & Co.

Complaint.

OLIVE L. GARDNER, pl'ff,
vs.
WELLS, FARGO & CO., defendant.

Said plaintiff says that the said defendant now is, and was at the time of commission of the wrongs and injuries hereinafter mentioned, an incorporated body. That said defendant now is, and was then, the owner and proprietor of a stage line leading from Omaha, Nebraska, via Denver City, Colorado Territory, and Great Salt Lake City, Utah Territory, to Virginia City, Montana Territory. That before and at the time of committing the said wrongs and injuries hereinafter mentioned, said defendant was a common carrier of passengers for hire and reward over said stage line, and as such carrier was the owner of certain stage coaches, used by said defendant for the carriage of passengers for hire and reward over said stage line. And

31 said defendant being such carrier and the owner such stage line and stage coaches, for the purposes aforesaid, the said plaintiff did, on or about the 5th day of March, 1867, at the instance and request of said defendant, become and was a passenger by said coaches, to be carried and conveyed with proper care and skill over said stage line, from the said city of Omaha to Denver City, for which passage said plaintiff paid to the said defendant one hundred dollars. And although said plaintiff was then and there received by said defendant as such passenger on said coaches, yet the said defendant, not regarding its duty in the premises, caused, through the carelessness of its agents, said plaintiff, as such passenger and while on said journey, to be placed in a certain one of said coaches which was carelessly, negligently and unskillfully loaded and managed by said defendants' agents, so that afterwards, to wit, on or about the 8th day of March, 1867, and whilst said coach was proceeding with said plaintiff, as such passenger, on said journey, said coach, through and by reason of the aforesaid careless, negligent and unskillful loading and management of the same, was overturned, with

the plaintiff therein as aforesaid, whereby said plaintiff then and there received great bodily injury, by reason of which injury said plaintiff suffered great pain and sickness, and was, and still is, and is likely ever to remain, injured both in body and in health.

32 Said plaintiff, for a further cause of action, says that said defendant, being such carrier and the owner of such stage line and stage coaches as aforesaid, and for the purpose aforesaid, the said plaintiff did, on or about the 6th day of July, 1867, at the instance and request of said defendant, become and was a passenger by said coaches, to be carried and conveyed with proper care and skill, from the said city of Great Salt Lake to Helena, Montana Territory, for which passage said plaintiff paid to said defendant the sum of one hundred and forty-five dollars; and although said plaintiff was then and there received by said defendant as such passenger by said coaches, yet the said defendant, not regarding its duty in the premises, caused, through the carelessness of its agents, said plaintiff as such passenger, and whilst on said journey, to be placed in a certain one of said coaches which was not roadworthy, and was carelessly, negligently and unskillfully loaded and managed by said defendant's agents, so that afterwards, to wit, on the 9th day of July, 1867, and whilst said coach was proceeding with said plaintiff as such passenger on said journey, said coach, by reason of the same not being roadworthy, and through the aforesaid negligent, careless and unskillful loading and management of the same, was overturned, with the plaintiff therein as aforesaid, whereby said plaintiff was then and there greatly injured and bruised in and upon her

33 neck, shoulders, back, spine, stomach and right leg and hip, and that, by reason of said injuries and bruises, said plaintiff has suffered and still suffers great bodily pain and sickness, and was, and still is, crippled and deprived of the powers of locomotion; was and still is greatly enfeebled both in body and in health, and is likely ever to so remain.

Said plaintiff says, that by reason of the premises she has been damaged in the sum of fifty thousand dollars, for which she prays judgement, with costs.

BASKIN & DE WOLFE,
Atty's for Plaintiff.

THE TERRITORY OF UTAH, *Great Salt Lake County, ss:*

Olive L. Gardner, the above-named plaintiff, being first duly sworn, upon oath says that the foregoing statements are true, as she verily believes.

OLIVE L. GARDNER.

Sworn to and subscribed before me this 13th day of November, 1867.

PATRICK LYNCH,
Clerk 3rd District Court, Utah.

Endorsed: Filed November 13th, 1867. P. Lynch, clerk, &c.

34 In the District Court, 3d judicial district, Territory of Utah, Hon. John Titus, judge.

Answer.

OLIVE L. GARDNER
vs.
WELLS, FARGO & CO.

Now comes defendants, by Theodore F. Tracy, their agent, and make this their answer to complaint of plaintiff herein, and say that she, the said plaintiff, ought not to be admitted to have or maintain her aforesaid action, and is estopped therefrom for this, that she, the said Olive L. Gardner, under the name and calling herself Mrs. O. L. Stafford, under which name she had taken passage in defendant's coaches, did, on Sept. 24th, A. D. 1867, before the institution of this action and since the wrongs and injuries complained of, by her certain writing under seal, bearing date Sept. 24th, A. D. 1867, acquit, release and discharge, for good and valid consideration by her received, these defendants, their agents or representatives, from all claim from or indebtedness to her for any loss, damage, or injuries sustained by her in person or property, on account of the capsizing of their stages when a passenger on the same, or on any account whatever, to that date.

Wherefore defendants pray judgment whether the said plaintiff should be admitted or received to her aforesaid action, contrary to her own admisssion, release and discharge, in writing under seal.

35 MARSHALL & CARTER,
Att'ys for Defendants.

Theodore F. Tracy, being by me first duly sworn, on his oath says that he is the agent of Wells, Fargo & Co., a foreign corporation, and as such is acquainted with the facts in the above plea set forth; that he has read the same and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those he believes it to be true.

THEO. F. TRACY.

Subscribed and sworn to before me this 22nd day of November, A. D. 1867.

PATRICK LYNCH, *Clerk, &c.*

Endorsed: Plea in estoppel. Filed November 22d, 1867. P. Lynch, clerk, &c.

In the 3d District Court of Utah Territory.

Replication.

OLIVE L. GARDNER, plaintiff,
vs.
WELLS, FARGO & Co., &c., defendants. } Replication.

And now comes said plaintiff, and, in reply to the answer herein, says that it is true that she did, on the 24th day of Sept.,
36 1867, sign a written receipt or instrument of the nature alleged in said answer, but of its full nature and extent she was not then nor is she now aware; that she did, as alleged in said answer, take passage on said defendants' stage line under the name of Mrs. O. L. Stafford, and under such name execute said instrument. But she further says that then, and on the said 24th of Sept., 1867, she was a feme covert, and her name was Mrs. O. L. Stafford.

And said plaintiff, for a further replication, says that said written instrument was obtained through the misrepresentation, threats and fraud of Theo. F. Tracy, the said agent of said defendant, and J. F. Hamilton, both of whom acted in collusion together in said misrepresentation, threats and fraud, which consists in the following, viz: that on the said 24th day of Sept., 1867, and at the time the written instrument aftoresaid was executed, said plaintiff was both crippled and sick; was then, and had for some time immediately before, been racked with excruciating pain, to alleviate which she had taken a large quantity of morphine; that while thus crippled and sick and distracted with pain, the said Theodore F. Tracy and J. F. Hamilton (the latter of whom was the physician by whom said plaintiff had been and was then attended, and who, for that purpose, was
37 employed by the said Theodore F. Tracy as agent as aforesaid) approached the sick bed of said plaintiff and offered her terms of compromise for the injuries set forth in said complaint; that then and there both the said Theodore F. Tracy and J. F. Hamilton falsely represented to said plaintiff that she had no cause of action against said defendant, and threatened that if said plaintiff refused the offer made by the said Theodore F. Tracy and went to law, the case would be taken to the Supreme Court of the United States, and that in the end she would likely fail, but that in any event she would not recover more than the sum offered, to wit, two thousand dollars, and that that sum would not be realized by her in less than four or five years, if at all; that said plaintiff refused said offer, and that afterwards, but while negotiations were still going on between said plaintiff and the said Theodore F. Tracy; the said Theodore F. Tracy, with his own hand administered to said plaintiff a considerable quantity of wine; and the said J. F. Hamilton then and there, and in the presence of the said Theodore F. Tracy, also as often as twice administered chloroform to plaintiff, ostensibly for the purpose of alleviating the severe pain of said plaintiff; that while thus lame, sick and racked with pain, and under the influence of

said narcotics so as aforesaid administered to her, and being importuned and persuaded by both the said Theodore F. Tracy, J. F. Hamilton, and other persons sent to her by the said Theodore
38 F. Tracy and J. F. Hamilton for that purpose, and being wholly ignorant of her legal rights, and having no one present to advise her as to the same, she accepted the sum of three thousand dollars, and signed said written instrument, but at the time she was not sufficiently in the possession of her faculties to know its contents or to have any distinct knowledge of what then and there transpired; that she was wholly incompetent to make any binding contract; that afterwards she offered to the said Theodore F. Tracy and J. T. Tracy, agents of said defendant, to return the sum paid to her in said compromise, but they refused the same; said plaintiff therefore says that said written instrument is nugatory and void, and constitutes no cause of defence to her action; said plaintiff, for further replication, says she is informed and believes that the injuries and wrongs first set forth in said complaint were not included in said compromise, and is not covered by said receipt.

Wherefore she asks the judgement prayed for in her complaint; and this she is ready to verify.

BASKIN & DE WOLFE,
Atty's for Plaintiff.

THE TERRITORY OF UTAH, *Great Salt Lake County, ss*:

Olive L. Gardner, being first duly sworn upon oath, says: That she has read the foregoing statements, and that they are true, as she verily believes.

OLIVE L. GARDNER.

39 Sworn to and subscribed before me this the 23rd day of November, 1867.

PATRICK LYNCH, *Clerk, &c.*

Endorsed: Filed November 23rd, 1867. P. Lynch, clerk, &c.

In the District Court 3rd judicial district of the Territory of Utah.
Hon. John Titus, judge.

Rejoinder.

OLIVE L. GARDNER
vs.
WELLS, FARGO & CO. } Rejoinder.

Now comes defendants, and for rejoinder to replication of plaintiff herein say, that they have not sufficient information to form a belief whether, on the 24th day of Sept., A. D. 1857, said plaintiff was a feme covert or not, and therefore deny the same, but say that she was at that date, and for a long time prior thereto, living separate from her husband, being abandoned by him, living and acting as a feme sole, and so represented herself to these defendants.

Defendants further deny that said written instrument was obtained by misrepresentation, threats and fraud of Theodore T. Tracy and J. F. Hamilton, and deny that there was any collusion between said T. F. Tracy and J. F. Hamilton, as alleged in plaintiff's replication.

40 Defendants for further answer, deny each and every material allegation in manner and form as alleged in plaintiff's replication, except as hereinafter admitted; and for further answer says, that said written instrument of release, although dated Sept. 24th, 1867, was not executed and delivered untill Sept. 27th, 1867, and after mature thought and reflection on the part of said plaintiff.

Defendants admit that plaintiff, sometime after said written agreement, offered to J. T. Tracy to return the sum paid to her in said compromise, and that he refused to accept the same; and defendants from this pray that the matters may be enquired of by the country.

MARSHALL & CARTER, &
C. H. HEMPSTEAD,
Att'ys for Def'ts.

Theodore F. Tracy being by me first duly sworn, on his oath says: That he is the agent of said def'ts at Salt Lake City, and has read the foregoing rejoinder and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to these he believes it to be true.

THEO. F. TRACY.

Sworn to and subscribed before me this 20th day of December, A. D. 1868.

PATRICK LYNCH, *Clerk, &c.*

Endorsed: Filed December 20th, 1867. Patrick Lynch, clerk, &c.

41 In the 3rd District Court of Utah Territory.

Surrejoinder.

OLIVE L. GARDNER, pl'ff,
vs.
WELLS, FARGO & CO., deft's.

And now comes said plaintiff and by way of surrejoinder says, that she does not positively remember on what day said written instrument was executed and delivered, but that whether the same was executed and delivered on the 24th or 27th of September, 1867, at the time of such execution and delivery, she was as alleged in her replication, a feme covert, and her name was then Mrs. O. L. Stafford; that at the time of said execution and delivery of said written instrument the acts of said misrepresentation, threats and fraud of the said Theodore F. Tracy and I. F. Hamilton, set forth in said rep-

plication, were made and perpetrated, and at that time the said Theodore F. Tracy & I. F. Hamilton administered to her the said narcotics as alleged in said replication; and all and singular the things set forth in said replication existed or transpired at the time said written release or instrument was executed and delivered, and at that time said plaintiff was wholly incompetent to make any binding contract or agreement by reason of the effects of the narcotics then administered to her by the said Tracy and Hamilton.

Said plaintiff further denies all and singular the other alle-
42 gations of said rejoinder, except such as admit allegations of said rejoinder, and, like the defendant, puts herself upon the country.

BASKIN & DE WOLFE,
Atty's for Plaintiff.

THE TERRITORY OF UTAH, *Great Salt Lake County, ss*:

Olive L. Gardner, being by me duly sworn. upon oath says, that the above statements are true, as she verily believes.

OLIVE L. GARDNER.

Sworn to and subscribed before me this 30th day of Dec'r, A. D. 1867.

PATRICK LYNCH, *Clerk, &c.*

Endorsed: Filed Dec'r 30th, 1867. Patrick Lynch, clerk, &c.

43 *Agreement of release.*

I, the undersigned, in consideration of having all expenses paid for medical and other attention, boarding, nurseing, and so forth, which I have enjoyed as an invalid, to this date, and in the further consideration of three thousand dollars to me in hand paid by Wells, Fargo & Co., the receipt of which I hereby acknowledge, do hereby voluntarily and without restraint, compulsion, or persuasive influences of any kind whatsoever being exerted upon me, release the said Wells, Fargo & Co., their agents or representatives, of all further claim from, or indebtedness to me for any loss, damage, or injuries sustained by me, in person or property, on account of the capsizing of their stages when a passenger in the same, or on any account whatsoever, to this date.

In witness whereof I have hereunto set my hand and seal, this 24th day of September, eighteen hundred and sixty-seven.

(L. S.) (Sig.) MRS. O. L. STAFFORD.

Witness:

(Sig.) J. F. HAMILTON.

(Sig.) THEO. F. TRACY.

44 In the 3d District Court of Utah Territory.

Instructions to the jury on the part of plaintiff.

OLIVE L. GARDNER, plff,
vs.
WELLS, FARGO & Co., deft.

And now comes said plaintiff by her attorneys and prays the court to give the following instructions to the jury, to wit:

1st. First. "Every pleading is taken to confess such traversable matters alleged on the opposite side as it does not traverse." The jury will therefore take as confessed all the material allegations of the plaintiff not denied by the defendants, and they will likewise take as confessed all the material allegations of the defendant not denied by the plaintiff.—Given.

2d. Second. The general rule of law is, that a married woman canno bind herself by contract, and such contracts are void. If the jury are, therefore, satisfied from all the evidence, that at the time said release was executed and delivered, the plaintiff was a married woman, they must find for her, and assess the damages as they may deem her entitled to by reason of her injuries, unless they further find that at that time the plaintiff was abandoned by her husband; but before the jury are authorized to find such abandonment, they must be satisfied from the evidence that the desertion of the
45 plaintiff by her husband was absolute and complete; that it was a voluntary separation from, and abandonment of his wife, embracing both the fact and intent of the husband to renounce, de facto, as far as he could do it, the marital relation, and leave his wife to act as a feme sole, and that he left her without providing her with the means of necessary support, and afterwards failed to furnish her with such means, (Justice Shaw in 4th Mit. 478.,) or that the plaintiff left the county, State or territory where she and her husband resided at the time of separation, by reason of the cruelty, wrongs and neglect of her husband, and that she has not since maintained any relations or correspondence (as man and wife) with her husband, and that he has not provided for or contributed to her necessary support. (15 Mass. 31; 6 Pick. 99; 1 Pet. 106.) The fact that the plaintiff and her husband lived separate and apart, and the declared intention never again to resume marital relations with each other, is not of itself evidence of desertion. because they may have separated and lived apart by mutual consent, and in that case it is not desertion. (1 Bishop on Marriage & Dix. sect. 763.) The jury must look at all the evidence in the light of instructions of the court, and return their verdict in accordance with the facts as they may find them. The general rule being that a married woman cannot bind herself by any contract or agreement, the burden of proof is upon the defendant to show that the plaintiff in this case is within the alleged exception, (Justice Shaw in 14 Mit. 478,) to wit, that she was abandoned by her husband at the time of the execution and

delivery of said release, if they believe, from the evidence, that she was married at the time of the execution thereof.—Given.

46 3d. Third. The presumption of the law is against fraud, and therefore, if the jury is satisfied that at the time of the execution and delivery of said release the plaintiff was unmarried or being a married woman, was then abandoned by her husband, in the manner specified in the foregoing instructions, they must find for the defendant, unless they are further satisfied that the execution of said release was obtained through fraud, or that when the same was executed and delivered, said plaintiff was not in such possession of her faculties as to be competent to contract; the burden of proving both of which last propositions devolves upon the plaintiff, and if the jury find the affirmative of both, or either of said last propositions, they must render a verdict for the plaintiff, and assess her damages at a sum not exceeding fifty thousand dollars.—Given.

4th. Fourth. If the jury find all of the issues joined in favor of the plaintiff, their verdict will simply be "We, the jury find for the plaintiff, and assess her damages at $;" but if they do not find all the issues in her favor, but find any one or more of them for her, they will then specify the issue or issues so found, and assess the plaintiff's damages. If the jury find for the defendant their verdict will be, "We, the jury, find for the defendant."—Given.

5th. Fifth. The plaintiff having alleged that her injuries were caused by the carelessness and neglect of the defendants' agents, and

47 the defendants not having denied such carelessness and neglect, but set up the plaintiff's release, these allegations are confessed by the defendant, and cannot be disputed in this suit.—Given.

6th. Sixth. If the jury find for the plaintiff, in fixing the measure of her damages they must look to all the circumstances in evidence in the case, and judging from all the facts and circumstances in evidence, you will assess such damages as in the exercise of a sound judgment, you may think her entitled to, not exceeding fifty thousand dollars. Given.

In the District Court in and for the 3rd judicial dist., Territory of Utah, Sept. term, A. D. 1868.

Instructions on the part of the defence.

OLIVE L. GARDNER
vs.
WELLS, FARGO & Co. } Defts. instructions.

The defts., by their att'ys ask the court to charge the jury as follows:

1st. The general rule of law is that a married woman cannot bind herself by contract during coverture; this rule has its exceptions, and they are to be found in cases in which no marital rights can be affected, or no possibility of coercion presumed, as in the case of banishment, transportation, or desertion of the husband.—Given.

48 2nd. Desertion is composed of two ingredients, namely, 1st, an actual cessation of the matrimonial cohabitation between the parties; 2nd, an intent to desert in the mind of the party offending. Both must combine to make the offence complete, but it is wholly immaterial whether the distance to which the parties remove from each other be great or small. The criterion is in all cases intent to abandon.—Given.

3rd. The desertion of the husband entitles the wife to choose her own domicile.—Given.

4th. That a married woman coming to this territory to reside, who has been in another State or territory, absolutely and completely abandoned by her husband, without fault of her own, and left to provide for herself, is competent to execute a release for damages for injuries to her own person occurring during such desertion.—Given.

5th. If the jury find from the evidence that the plaintiff in another State or territory was deserted by her husband and afterwards plaintiff became a resident of this territory, and while so abandoned by her husband she freely and voluntarily, without misrepresentation, threats, undue influence or fraud, executed the release mentioned in defendant's plea, such release is a bar to plaintiff's action and she cannot recover.—Given.

6th. To set aside a solemn instrument between parties on the ground of misrepresentation, fraud or mistake, the evidence
49 of it must be what occurred at the execution of the instrument, and should be clear, precise and indubitable.—Given.

7th. The law in fixing the standard of positive legal competency, has fixed a low standard of capacity, but it is a clear and definite one, and therefore wise and safe. It holds that weak minds differ from strong ones only in the extent and power of their faculties, but unless they betray loss of understanding, idiocy or delusion, they cannot properly be considered unsound.—Given.

8th. If the jury find that the release was executed by the plaintiff without fraud, threats, misrepresentation or undue influences, on the part of the defendants, or their agents, plaintiff cannot avoid said release on the ground of physical debility or mere weakness of mind, unless such weakness amounts to deprivation of her reasoning faculties to such an extent as not to understand the effects of her acts. Given.

9th. Notwithstanding a person may enter into a contract while so enfeebled in mind as to be temporarily incapacitated to make a binding contract, yet such contract is not so absolutely void as to be incapable of satisfaction; and if, after recovering the faculties, the person so executing recognizes and acts upon such contract, a ratification may be inferred from such recognition and action, although the original contract may have been invalid in the first
50 instance if the parties making the same had legal capacity to act.—Given.

10th. Where a criminal offence is charged in a civil suit the charge must be proven beyond any reasonable doubt, and the law

requires the same degree of evidence to sustain such charge as in the case of a criminal prosecution under an indictment.—Given.

11 and 12.—Refused.

13th. The first issue for the jury to find under the pleadings is as to the coverture of plaintiff at the time of making release, and in this the only legal proof of such marriage is either the certificate of the person who performed the ceremony, the testimony of some witnesses who was present at the cerimony, or general reputation in the community where the husband and wife resided, satisfactorily proved by competent witnesses.—Given.

14th.—Refused.

15th. The jury are the sole judges of the weight of the evidence and the degree of credence to be given to the witnesses. In case of conflict of testimony, the jury in determining the credibility of the witnesses may take into consideration the inherent probability of their statements, the surrounding circumstances, and the appearance and bearing of the witnesses on the stand. If they find that any witness in the trial has wilfully testified to a falsehood as to one material fact, they may disregard the entire testimony of such witness unless corroborated by other unobjectionable evidence, and then only so far as corroborated.—Given.

51 16th. If the jury believe from the evidence in this case that the release in evidence was fairly and honestly obtained, and that the plaintiff was an unmarried woman, or if married, was at the date of the execution of said release abandoned by her husband, then, in order that said release constitute a full bar to further demand it should be under seal, or a mere receipt would only be prima facia evidence of the money paid.—Given.

[In the 3rd District Court, Utah Territory, Sept. term, A. D. 1868.

Bill of exceptions.

OLIVE L. GARDNER *vs.* WELLS, FARGO & Co. } Bill of exceptions.

Be it remembered that the issues in this case came on for trial on the 15th day of September, A. D. 1868, at the regular September term, A. D. 1868, of said court.

1st. The plaintiff having introduced D. W. F. Anderson as a witness to maintain the issues on her part, by her counsel asked said witness the following question, to wit: (The witness having testified that he first saw the plaintiff in November, A. D. 1867.)

What was the condition of the plaintiff's mind when you first saw her in 1867?

52 To which question counsel for the defence objected as being irrevelant, whereupon the counsel for the plaintiff stated that said testimony was offered as reflecting upon the question of damages only, and that they offered it out of its regular order because the witness, Dr. Anderson, had professional engagements which

required his attention and absence from court, and that if the plaintiff did not afterwards, during the course of the trial, introduce evidence tending to show that the state of mind and condition of the plaintiff, which said witness might testify to, were the result of the injuries which in her complaint the plaintiff alleged she had received, that then the testimony would be incompetent, and the court could so instruct the jury.

Whereupon the court overruled the objections of defendant's counsel and permitted said question to be answered as reflecting on the question of damages, subject, however, to be ruled out if not connected afterwards by the evidence of plaintiff with the aforesaid injuries; that evidence was afterwards introduced by plaintiff tending to so connect it.

Said deft's counsel, at the time said objection was overruled, then and there excepted to the ruling of the court.

In answer to said question said witness said: "She was a very sick woman, suffering intense pain, and her mind was at times greatly affected from injuries to the spine."

2nd. The plaintiff also introduced Drs. Bernhisel and Sprague, after the introduction of evidence by plff. tending to connect her condition, as testified to by said witnesses, with the injuries
53 set forth in her complaint, and the court, pursuant to its former ruling, permitted the said witnesses to testify to plaintiff's mental and physical condition in Nov'r, A. D. 1867, and subsequent to the date of the execution of the release, to wit: subsequent to Sept. 27th, A. D. 1867, as reflecting in the measure of damages, to all of which defendants objected, which objections were overruled by the court, to which ruling defts. by their counsel then and there excepted.

3rd. The defts., to maintain the issue on their part, introduced Theo. F. Tracy as a witness, and offered to prove by said witness that in the latter part of June, A. D. 1867, and previous to the injuries referred to in the second count of plaintiff's complaint, the plaintiff represented herself to witness, as managing agent of def'ts., as a feme sole. To which offer plaintiff's counsel objected. The court sustained the objection, ruling that said representation must be confined to the time during which negotiations were pending for a settlement of said injuries. To all of which defts. by their counsel then and there excepted.

4th. In instructing the jury, at the request of the plaintiff, the court charged as follows: 1st. Every pleading is taken to confess such traverseable matters alleged on the opposite side as it does not traverse. The jury will therefore take as confessed all the material allegations of the plaintiff not denied by the defts., and they will likewise take as confessed all the material allegations of the
54 defendants not denied by the plaintiff. To all of which defts. by their counsel then and there excepted.

5th. The court further charged the jury, at the request of the plaintiff, as follows:

The general rule of law is, that a married woman cannot bind herself by contract, and such contracts are void. If the jury are

therefore satisfied, from the evidence, that at the time said release was executed and delivered, plaintiff was a married woman, they must find for her, and assess such damages as they may deem her entitled to by reason of her injuries, unless they further find that at that time the plaintiff was abandoned by her husband. But before the jury are authorized to find such abandonment, they must be satisfied from the evidence that the desertion of the plaintiff by her husband was absolute and complete; that it was voluntary seperation from, and abandonment of, his wife, embracing both the fact and the intent of the husband to renounce de facto, as far as he could do it, the marital relation, and leave his wife to act as a feme sole, and that he left her without providing her with the means of necessary support, and afterwards failed to furnish her with such means; or that the plaintiff left the country, State or Territory, where she and her husband resided at the time of separation, by reason of the cruelty, wrongs or neglect of her husband, and she has not since maintained any relations or correspondence (as
55 man and wife) with her husband, and that he has not provided for or contributed to her necessary support. The fact that the plaintiff and her husband lived separate and apart, with the declared intention never again to resume marital relations with each other, is not of itself evidence of desertion, because they may have separated and lived apart by mutual consent, and in that case it is not desertion.

The jury must look at all the evidence in the light of the instructions of the court, and return their verdict in accordance with the facts as they may find them.

The general rule being, that a married woman cannot bind herself by any contract or agreement, the burden of proof is upon the defendants to show that the plaintiff, in this case, is within the alleged exceptions, to wit: that she was abandoned by her husband at the time of the execution and delivery of said release, if they believe, from the evidence, that she was married at the time of the execution thereof.

To which instruction the defendants, by their council, then and there excepted as tending to mislead the jury.

6th. The defendants, by their counsel, excepted to the fourth, fifth, and sixth instructions asked by the plaintiff and given by the court in its charge.

7th. The defendants, by their counsel, asked the court to instruct the jury as follows:

56 *11th instruction.*

The defendants having filed a plea, in estoppel, which neither admits nor denies the allegation of the complaint herein, the only questions submitted to the jury are, 1st. The competency of the plaintiff to execute a release; 2nd. Whether fraud, misrepresentations, threats, or undue influence were used in obtaining the execution of the same. If the jury find for the plaintiff, in either or both of these issues, they will render a verdict: "We, the jury, find

for the plaintiff," and no more; and if the jury find both these issues for the deft's, they will return their verdict: "We, the jury, find for the defendants."

Which instruction was refused by the court; whereupon the defendants, by their counsel, then and there excepted.

8th. The defendants further asked the court to charge as follows:

12th instruction.

The only question before the jury, under the pleadings, is, should the plaintiff be allowed to maintain the action set forth in plaintiff's complaint herein, contrary to her own admission, release and discharge in writing under seal.

Which instruction the court refused to give, and the def'ts, by their counsel, then and there excepted.

57 9th. The def'ts, by their counsel, further asked the court to charge:

14th instruction.

It is a maxim of the law, "That no one shall take advantage of his own wrong," and therefore a married woman, who falsely represents herself as a feme sole, and thereby induces another to deal with her in good faith, cannot, after the death of the husband or the dissolution of the marriage, avoid, on the ground of coverture, her release under seal, executed in such dealing where she has freely accepted and appropriated the consideration of such instrument under seal.

Which instructions was refused by the court, because it is an abstraction and not by evidence or otherwise connected in any way with the case.

To which ruling def'ts, by their counsel, then and there excepted, and prays that this his bill of exceptions be signed and sealed, which is accordingly done, and upon his motion ordered to be made a part of the record in this case.

This bill of exceptions was settled by the parties before me this 28th day of October, A. D. 1868, and the same are substantially correct.

Given under my hand this 28th day of October, A. D. 1868.*

C. C. WILSON, *Judge, &c., &c.*

58 *Inserted to the foregoing bill of exceptions, by agreement of the respective parties' counsel, and orders of the Supreme Court for Utah Territory, November 9th, 1868:

Agreement upon bill of exceptions aforesaid.

The following agreement was entered into, in writing, by the respective parties' counsel in the case of Wells, Fargo & Co., appellants, vs. Olive L. Gardner, appellee, November 9th, 1868, before the Supreme Court for Utah Territory, and submitted to the court,

which was approved by the court, filed and ordered to be inserted on the foregoing bill of exceptions, to wit:

"In the Supreme Court for the Territory of Utah, Oct. term, A. D. 1868.

"WELLS, FARGO & Co., appellants,
vs.
"OLIVE L. GARDNER, appellee.

"Upon agreement of counsel of parties in open court, it is hereby ordered that the record of the District Court herein be amended, so as to show that the "bill of exceptions" therein was filed in the court below, on the day of the signing of the same by the judge below, to wit, on the 28th day of October, A. D. 1868, and the clerk of this court is hereby ordered to insert the same upon the said bill of exceptions, which was accordingly done, and the same entered herein by me.

W. J. APPLEBY,
Clerk Supreme Court for U. T'y.

59 *Appeal bond.*

Know all men by these presents, that we, Wells, Fargo & Co., a corporation, by Theo. F. Tracy, its attorney, as principal, and H. S. Eldredge, Thomas D. Pitt and Warren Hussey, as sureties, are held and firmly bound unto Olive L. Gardner in the penal sum of twenty-four thousand dollars, ($24,000,) lawful money of the United States of America, to be well and truly paid unto the said Olive L. Gardener, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and sixty-eight.

The condition of the above obligation is such that whereas, on the 19th day of September, A. D. 1868, the above-named obligee, Olive L. Gardner, recovered judgement in the District Court in and for the third judicial district, Territory of Utah, against the above-named obligor, Wells, Fargo & Co., for the sum of twelve thousand dollars, and costs of suit, taxed at .

And whereas the said obligor, Wells, Fargo & Co., has appealed to the Supreme Court of said Territory of Utah from said
60 judgement; and whereas the appellant is desirous of staying the execution of the said judgement so appealed from during the pending of said appeal.

Now, therefore, if the said appellant, Wells, Fargo & Co., shall pay, or cause to be paid, the amount awarded against said appellant in said Supreme Court, and all costs that may accrue by reason of

this appeal, then this obligation to be void, and of none effect; otherwise to remain in full force and virtue.

WELLS, FARGO & CO.,
[L. S.] By THEO. F. TRACY,
Att'y-in-fact.
[L. S.] T. D. PITT.
[L. S.] H. S. ELDREDGE.
[L. S.] WARREN HUSSEY.

Signed, sealed and delivered in the presence of—
TH. M. MUF.
E. S. BARRY.

Approved by me, this 1st day of October, A. D. 1868.
C. C. WILSON, *Judge, &c.*

Endorsed: Filed October 7th, 1868. P. Lynch, clerk, &c.

61 *Transcript of record of District Court.*

JANUARY 6TH.

The case of Olive L. Gardner vs. Wells, Fargo & Co., was called up. Charles H. Hempstead, esq., one of the counsel for defence, asked for an open commission to take depositions at Denver, Colorado. Verbal motion argued by plaintiff's and defendant's counsel. Leave granted to defendant to file a proper affidavit for a continuance by to-morrow.

JAN'Y 7TH.

The case of Olive L. Gardner vs. Wells, Fargo & Co., was again called up. Affidavit for continuance filed by defendant. Opposed by R. N. Baskin, esq., for plaintiff; argued by counsel, and continuance granted by the court.

SEPT. 15TH.

The case of Olive L. Gardner vs. Wells, Fargo & Co. was again called up. R. N. Baskin, esq., chief counsel for plaintiff, asked leave to withdraw his motion to strike out certain matters from defendant's depositions. Leave to withdraw granted by the court.

Issue being joined, the following jury were duly empanneled and sworn to try the case, who were each, by panels of four, sworn. Each juror was examined on his voire dire. Henry Emory, John C. Ensign, Albert Davis, Henry Moon, C. B. Horne, Samuel Broadhurst, George Campkin, A. L. Fullmer, Simeon Attwood, Wm. H. Solomon, David Day and Foster Curtis.

Drs. Washington, F. Anderson and John M. Bernhisel were sworn and examined on the part of the plaintiff. H. W. Isaacson,
62 Priscilla Martin, Mrs. Elizabeth Kesler and Edward Mitchell were also sworn and examined on the part of the plaintiff.

(Counsel for defendants objected to the testimony of Drs. Anderson and Bernhisel, and Henry W. Isaacson. Objections overruled, and ruling excepted to.)

SEPT. 16TH.

Case resumed. Dr. J. F. Hamilton, Theodore F. Tracy, Thomas Demartis and Wm. H. Taylor sworn and examined on the part of the defence.

Chas. H. Hempstead, esq., read depositions of Samuel E. Brown, of Denver, Benajah P. Stubbs, James McGhie and Achael M. Sanford, and offered the same in evidence. E. W. East was sworn and examined, and as clerk of the Probate Court of Salt Lake county, exhibited petition in divorce in the case of Stafford vs. Stafford, which was offered in evidence.

Theodore F. Tracy, being examined, offered in evidence a letter written by plaintiff on the 30th September, A. D. 1867, which was objected to by R. N. Baskin, esq.

(Court overruled the objection. Ruling excepted to. An objection being raised by plaintiff's counsel to a question put to witness, T. F. Tracy, and the objection having been sustained by the court, the ruling was excepted to by defendant's counsel)

SEPT. 17TH.

Case resumed. Dr. J. F. Hamilton testified on the part of the defendant. Joseph A. Ford and James J. Tracy sworn and examined on the part of the defence. Samuel L. Sprague sworn and
63 examined on the part of the defendant and plaintiff. Mrs. Elizabeth Kesler and Edward Mitchell recalled and examined on the part of plaintiff.

J. F. Hamilton recalled on the part of the plaintiff.

Here, both plaintiff and defendant's counsel rested their case.

SEPT. 18TH.

The case of Olive L. Gardner vs. Wells, Fargo & Co. was called up. Jury called; all answer to their names, except Mr. H. Solomon, who was absent on account of severe illness.

Whereupon it was agreed in open court by counsel on both sides, that they would proceed with their arguments to the remaining eleven jurors, and take no exceptions to their verdict by reason of the absence of said juror.

Argument to the jury opened. S. de Wolfe, esq., on part of plaintiff, followed by J. M. Carter, esq., for defence; Hosea Stent, esq., followed for plaintiff, and Chas. H. Hempstead for defence.

SEPT. 19TH.

The case of Olive L. Gardner vs. Wells, Fargo, & Co. was resumed. Jury called; all answer to their names, as of yesterday.

Thomas Marshal, esq., closed the argument on the part of the defence, followed by R. H. Baskin, esq., for plaintiff.

The court charged the jury on the law in the case, who retire in charge of a bailiff to consider on their verdict.

The jury come into court, and through their foreman, pre-

64 sent the following verdict, (plaintiff and defendant present by their counsel.):

"We, the jury, find for the plaintiff, and assess damages at twelve thousand ($12,000) dollars.

"A. L. FULMER, *Foreman.*"

Defendant's counsel gave notice that they would file a motion for a new trial.

The court having considered the verdict in the case of Olive L. Gardner vs. Wells, Fargo & Co., it was thereupon ordered and adjudged, that the said plaintiff have and recover off and from the said defendant the said sum of twelve thousand dollars, and costs of suit taxed at dollars, and that execution issue therefor.

SEPT. 29TH.

Motion for new trial argued and overruled, and defendant given till Saturday, October 3rd to file supersedeas bond.

TERRITORY OF UTAH, *Salt Lake County, ss:*

I, the undersigned, clerk of the District Court in and for the third judicial district of Utah Territory, certify that the within and foregoing is a true and correct transcript of the papers and record of the case of Wells, Fargo & Co., appellant, and Olive L. Gardner, appellee (as originally filed "Olive L. Gardner vs. Wells, Fargo & Co.)

65 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Salt Lake City this 30th day of October, A. D. 1868.

[SEAL.] (Signed) PATRICK LYNCH, *Clerk, &c.*

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67 Which said foregoing record was endorsed as follows, to wit:

(No. 28.)

WELLS, FARGO & Co., appellants,
ads.
OLIVE L. GARDNER, appellee.

"Transcript of record and proceedings had in the case of Olive L. Gardner, pl'ff, vs. Wells, Fargo & Co.. defendants, in the 3d District Court for Utah Territory."

"Filed in the clerk's office of the Supreme Court for Utah Territory, October 30th, 1868.

(Signed) W. J. APPLEBY, *Clerk.*

TERRITORY OF UTAH, *Salt Lake Co., ss:*

68 I, W. J. Appleby, clerk of the Supreme Court in and for the Territory of Utah, do certify that the with in and foregoing contains and is a true copy, (commencing at and from folio 30,) of the transcript of the record and proceedings had in the case of Olive L. Gardner, pl'ff, vs. Wells, Fargo & Co., def'dts, in the District Court in and for the third judicial district for the Territory of Utah, (the agreement of counsel of the respective parties in relation to the filing the "bill of exceptions," and by order of the Supreme Court for said Territory, inserted on said bill of exceptions, see folio 58, excepted,) as sent up from said lower court and filed October 30th, A. D. 1868, and remaining of record in my office, as by me carefully compared.

In testimony whereof I have hereunto set my hand and affixed the seal of said Supreme Court at my office in Salt Lake City, U.T'y, November, 25th, A. D. 1868.

[SEAL.] W. J. APPLEBY, *Clerk, &c.*

SUPREME COURT OF THE UNITED STATES.

No. 397.

CHARLES J. CARPENTER, PLAINTIFF IN ERROR,

vs.

HENRY W. WILLIAMS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the Supreme Court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, at the March term thereof, A. D. 1868, between Charles J. Carpenter, plaintiff in error, against Henry W. Williams, defendand in error, a manifest error hath happened, to the great damage of the said Charles J. Carpenter, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this tenth of April, in the year of our Lord one thousand eight hundred and sixty-eight.

Issued at office in the city of St. Louis, with the seal of the Circuit Court of the United States for the district of Missouri, dated as aforesaid.

[SEAL.]

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri Districts.

Allowed by—

DAVID WAGNER,
Presiding Judge Sup. C't Mo.

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the Supreme Court, held at St. Louis, of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States, held at Washington, a full, true and complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this tenth day of August, A. D. 1868.

[SEAL.]

O. T. FISHBACK, *Clerk*,
Per E. P. McCARTY, *D'y.*

Endorsed: Charles J. Carpenter vs. Henry W. Williams. Writ of error.

REC. 397—1

The United States of America to Henry W. Williams, Sandford B. Kellogg, Melvin L. Gray, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the districts of Missouri, wherein Charles J. Carpenter is plaintiff in error and you are defendant in error, [and you are defendants in error,] to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David Wagner, presiding judge of the Supreme Court of Missouri, this 10th day of April, in the year of our Lord one thousand eight hundred and sixty eight.

DAVID WAGNER,
Presiding Judge Sup. C't Mo.

We admit due service of the foregoing citation on us and each of us respectively, this 11th day of April, 1868.

M. L. GRAY.
SANDFORD B. KELLOGG.
HENRY W. WILLIAMS.

Endorsed: Charles J. Carpenter, pl'ff in error, vs. Henry W. Williams, et al., def't in error. Citation.

A STATE OF MISSOURI, *ss:*

Be it remembered that heretofore, to wit, on the twenty-ninth day of February, A. D. 1868, there was filed in the office of the clerk of the Supreme Court, held at St. Louis, of the State of Missouri, a transcript of the record and proceedings in a cause lately pending in the St. Louis Land Court, wherein Henry W. Williams was plaintiff and Charles J. Carpenter was defendant; and be it further remembered that on the twenty-third day of March, A. D. 1868, there was filed in said cause a stipulation amending the said transcript, filed as aforesaid, which said transcript, together with the stipulation and amendment as aforesaid, are in the words and figures following, to wit:

Supreme Court, March term, 1868.

Stipulation.

HENRY W. WILLIAMS, respondent,
vs.
CHARLES J. CARPENTER, appellant.

In this case it is stipulated and agreed by the parties that the transcript of the record filed in this case shall be amended as follows:

B First. A copy of the original petition filed by the plaintiff in

the St. Louis Land Court, and the defendant's answer thereto, shall be annexed to the transcript and made a part of it.

Second. It is admitted that after the reversal of the judgment in this case by the Supreme Court at its March term, the plaintiff, on the tenth day of October, 1859, made application to the St. Louis Land Court for leave to file an amended petition in this case, being the same now on the record, and that said court refused to grant such leave, and the plaintiff at the time duly excepted to the action of the court in refusing leave to file an amended petition in this case, and that the plaintiff tendered his bill of exceptions, and the same was duly signed by the judge of said court.

Third. It is further agreed that the case was tried in the St. Louis Land Court, at the October term thereof, in the year 1859, and that the trial was begun on the 9th day of November, 1859.

M. L. GRAY,
For himself and pl'ff.
KRUM, DECKER & KRUM,
Att'ys for C. J. Carpenter.

C *Copy of original petition and answer.*

HENRY W. WILLIAMS
vs.
CHARLES J. CARPENTER.

The original petition in this case was filed in the St. Louis Land Court on the first day of December, A. D. 1856, and is as follows:

Plaintiff states that on the first day of May, 1855, he was entitled to the possession of the following described premises, to wit: Twelve arpens of ground, in the form of a parallelogram, to be taken from the east end of a tract of one by forty arpens, in the southern part of the Grand Prairie, being the same which was proved before Recorder Hunt in the name of Louis Lacroix, meaning Joseph Lacroix, described in said proof as bounded north by Pierre Baribeau, south by Paul Le Grandem, alias Guitard, said one by forty arpens being the same which was surveyed by William H. Cozens, deputy United States surveyor, in the name of Joseph or Louis Lacroix, and approved by the United States surveyor general as survey number 1664; and being so entitled to the possession thereof, the defendant afterwards, on the said day, entered into possession of said
D premises, and unlawfully withholds from plaintiff the possession thereof, to his damage in the sum of five thousand dollars. Plaintiff asks judgment for the possession of said premises, with damages for the detention of same.

WHITTELSEY,
Att'y for pl'ffs.

Answer.

On the 10th March, 1857, the defendant filed his answer as follows:

HENRY W. WILLIAMS
vs.
CHARLES J. CARPENTER.

The defendant, for answer to plaintiff's petition, denies that plaintiff was entitled to the possession of the premises, as stated in the petition, at the time therein stated, or at any other time since or prior thereto. He denies that he unlawfully withholds from the plaintiff the possession of the premises, as stated in the petition. He denies the statement in the petition that the proof of said premises before Recorder Hunt, in the name of Louis Lacroix, means Joseph Lacroix. He denies the plaintiff's right to recover damages against him, as stated in the petition.

E

C. C. McCLURE,
Att'y for def'ts.

And the said transcript from the said St. Louis Land Court is in the words and figures following, to wit:

1 STATE OF MISSOURI, *County of St. Louis*:

Be it remembered, that on the first day of December, 1856, a petition was filed in the clerk's office of the Land Court of St. Louis county, in which Henry W. Williams is plaintiff and Charles J. Carpenter is defendant, upon which a summons issued, in the words and figures following, to wit:

Summons.

COUNTY OF ST. LOUIS, *ss*:

The State of Missouri to the sheriff of St. Louis county, greeting:

We command you to summon Charles J. Carpenter to appear before the judges of our St. Louis Land Court on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the second Monday of March next, then and there to answer the complaint of Henry W. Williams, as set forth in the annexed petition; and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 2d day of December, in the year of our Lord eighteen hundred and fifty-six.

[SEAL OF THE ST. LOUIS LAND COURT.] CHAS. A. MANTZ,
Clerk.

2 *Sheriff's return.*

To which the sheriff made the following return to wit:

Executed this writ in the county of St. Louis, December 6, 1856, by delivering to Charles J. Carpenter, the within-named defendant, a copy of the same, with the petition, as furnished by the clerk.

JAMES CASTELLO, *Sheriff*,
By THOS. CHADBOURNE, *Dep'y*.

And upon the 23d day of October, 1865, the following amended petition was filed, which is in the words and figures following, to wit:

In the St. Louis Land Court, of October term, 1859.

Amended petition.

HENRY W. WILLIAMS, plaintiff,
vs.
CHARLES J. CARPENTER, defendant.

COUNTY OF ST. LOUIS, *ss:*

Plaintiff, by leave of court, files this as his amendment to his former petition, and states that one Joseph Lacroix was for many years an inhabitant of the town or village of St. Louis, in said county, to wit, from the year 1780 until the year 1832; that by an act of Congress of the 13th day of June, 1812, the United States confirmed and granted to the inhabitants of said town or village of St. Louis, according to their several right or rights, all their rights, titles,
3 and claims to town or village lots, out-lots, common field-lots, and commons, in, adjoining and belonging to the said town or village of St. Louis, as the said lots have been inhabited, cultivated or possessed, prior to the 20th day of December, 1803; that by force of said act of Congress there was granted to said Joseph Lacroix, as such inhabitant, cultivator and possessor, a common field-lot of one arpent in front by forty arpents in depth, in the Grand Prairie common fields of St. Louis, belonging to said town or village of St. Louis, bounded north by a common field-lot of Pierre Barribeau, and south by a common field-lot of Paul le Grandeur, alias Guitard; said one by forty arpents of land, being the same surveyed by Wm. H. Cozzens, deputy surveyor of the United States, under direction of the surveyor general of Illinois and Missouri, in the name of Joseph or Louis Lacroix, and approved by said surveyor general as United States survey No. 1664.

[Plaintiff further states, that by force of said act of Congress of 1812 the Grand Prairie common field-lot next north of and adjoining said lot of Joseph Lacroix was granted and confirmed to Pierre
4 Barrabeau upon the same terms and conditions as above stated; and that the said common field-lots of Joseph Lacroix and Pierre Barribeau respectively bounded each other on the north and south.

Plaintiff further states, that on the 26th day of May, 1824, another act of Congress was passed in fulfilment of the stipulations of the treaty of cession at Paris, between the United States and the French republic, of the 20th of April, 1803, whereby it was provided that the individual owners or claimants of town lots, out-lots, and common field-lots in, adjoining or belonging to said town or village of St. Louis, and other villages named in said act, which lots were confirmed by the said act of Congress of 13th of June, 1812, on the ground of inhabitation, cultivation or possession, prior to the 20th day of December, 1803, should proceed within eighteen months after the passage of said act of 26th of May, 1824, to designate their said lots by proving before the recorder of land titles for said State of Missouri the fact of such inhabitation, cultivation or possession, and the boundaries and extent of each claim, so as to enable the surveyor general to distinguish the private from the vacant lots appertaining to the said towns and villages; and it was further provided by said
5 last-named act that the said recorder of land-titles should issue a certificate of confirmation for each claim confirmed, and receive a fee of one dollar for each lot so proved to have been inhabited, cultivated and possessed, to be paid by the respective claimants.

Plaintiff further states that in pursuance of the provisions of said act of Congress of the 26th of May, 1824, the said Joseph La Croix, on the 3d day of March, 1825, at the city of St. Louis, in said county, appeared before the said recorder of land titles of the United States for the district of Missouri, and then and there proved by a competent witness before the said recorder the fact that the said Joseph Lacroix, the claimant, cultivated the said lot thirty years before the said day last named, and that he had continued to cultivate the same for ten or twelve consecutive years, and was in possession of the same ever since that time; and the said recorder made an entry of the said proof and evidence in his minutes, and a copy thereof is herewith filed.

And plaintiff further states, that the said recorder of land titles, by accident or mistake, entered upon the said minutes the
6 name of Louis Lacroix as claimant, instead of Joseph Lacroix, the person entitled to the certificate of confirmation; and the said recorder then and there intended to describe and insert Joseph Lacroix as the person who claimed and proved the said lot of land before him, but by mere accident and mistake inserted the name of Louis Lacroix for Joseph Lacroix, and then and there meant and intended by the said name of Louis Lacroix the same identical person, Joseph Lacroix, the claimant, who appeared before him and made the proof, as will appear from the minutes of the said recorder, wherein the claims of Joseph Lacroix and Louis Lacroix, and Pierre Barribeau are inserted, copies of which are herewith filed.

And plaintiff further says, that the said recorder of land titles issued and delivered to Joseph Lacroix aforesaid a certificate of confirmation for the aforesaid Grand Prairie common field-lot in the name of Louis Lacroix, thereby meaning and intending to describe Joseph

Lacroix, the claimant, who had made the proof as aforesaid before him; and by the same accident and mistake as aforesaid the said recorder inserted the name of Louis for Joseph Lacroix.

Plaintiff further avers, that it appears from the face of the min-
7 utes of proof before the said recorder that Joseph Lacroix was the person intended who made the proof, and that the mistake in the Christian name of Louis for Joseph is corrected in other parts of the said proceedings before the said recorder, on the same day.

Plaintiff further states, that the said Joseph Lacroix was an unlearned man, and could not read or write, and although his name by baptism was Joseph Lacroix, yet he was commonly known among his neighbors and acquaintances as Lacroix Bissonette, a nickname, according to the almost universal custom of the old French inhabitants, who rarely were called by their names received in baptism.

Plaintiff avers that there was no person in the city of St. Louis on the 3d day of March, 1825, who would answer the description of Louis Lacroix, as given by the said recorder, and proved before him as aforesaid, but Joseph Lacroix, the said claimant; that no person was then residing in St. Louis, city or county, by the name of Louis Lacroix; that no inhabitant of St. Louis, town or village, prior to the 20th day of December, 1803, was known by the name of Louis Lacroix; and that there was no inhabitant of the town or village of St. Louis after the same last-named date by the name of Louis Lacroix.

8 Plaintiff further avers, that after the said confirmation certificate was issued to Joseph Lacroix, in the name of Louis Lacroix, as aforesaid, the said Joseph claimed and possessed the said common field-lots, as above described, until his death, in the year 1832; and the said Joseph Lacroix left the following heirs-at-law surviving him, being his children, six in number, to wit: Marie Louise, who married John Eymer; Therese, who married Joseph Montaigne; Julie, who married Sarany Ruelle; Marie, who married Auguste Guibord; Frances Lacroix, and Basil Lacroix. Basil Lacroix died shortly after his father, intestate, and without having been married.

And the following-named heirs of Joseph Lacroix aforesaid were in the lawful possession of said lot of one by forty arpents of land from the time of the death of said Joseph Lacroix until the dates of the following several conveyances, whereby they mediately directly conveyed all their right, title, interest and estate in and to said one by forty arpents of land unto Joseph B. Cofield and his heirs, by their several deeds herewith shown to the court, as follows, to wit:

9 1. A deed of Francis Lacroix and wife to Joseph B. Cofield, of the 18th of December, 1848.

2. A deed of Joseph Montaigne and Therse, his wife, to Joseph B. Cofield, dated the 13th of December, 1848.

3. A deed of Savary Ruelle and Julie, his wife, to Joseph B. Cofield, dated the 13th day of December, 1848.

4. A deed from John Eymer and Marie Louise, his wife, to Augustus Guibord, jr., dated the 21st day of December, 1848; all of their interest in said one by forty arpents to him.

5. Augustus Guibord and Marie his wife, to Augustus Guibord, jr.,

dated the 21st day of December, 1848, conveying all their interest in one by forty arpents of land unto him.

6. A deed from Augustus Guibord, jr., and Editha his wife, to Joseph B. Cofield, dated the 20th day of December, 1848, conveying all the interest the said Augustus Guibord, jr., had acquired by the said deeds from John Eymer and wife, and Augustus Guibord, sr., and wife, in and to the said one by forty arpents of land unto the Josph B. Cofield.

By virtue of which deed the said Joseph B. Cofield became
10 seized and possessed of all the right, title, interest and estate of the heirs at law of the said Joseph Lacroix, deceased.

And the said Joseph Cofield and wife conveyed the eastern twelve arpens sued for in this action of said tract of one by forty arpens of land to James B. Townsend, by deed dated the 20th day of March, 1849, here shown to the court.

And the said James B. Townsend and wife, by their attorney in fact, under power of attorney dated the 20th day of March, 1849, conveyed the said premises sued for, being twelve arpens on eastern end of said tract of land of one by forty arpens, to Henry W. Williams, by deed dated the 21st day of February, 1855, here shown to the court.

By virtue of which several deeds and conveyances the said Henry W. Williams, the plaintiff, became seized and possessed of the said eastern twelve arpens of said tract of land of one by forty arpens, so proved before the said recorder by said Joseph Lacroix.

And the plaintiff says that the said Townsend, through whom plaintiff claims title, was in the actual possession of said lot of
11 ground by enclosure in the year 1849, and had a tenant on it.]

Plaintiff avers that the defendant unlawfully and wrongfully entered into the possession of said premises sued for, being twelve arpens of land in the form of a parallellogram on the eastern end of said tract of one by forty arpens of land so proven before said recorder, by said Joseph Lacroix, in the year 1851, [and compelled the tenant of said Townsend to attorn to him the said Carpenter; and in support of his wrongful and unlawful act the said defendant pretended that he had acquired title to the said premises through the heirs-at-law of one Louis Lacroix, by a deed of the 6th day of August, 1850, from Celostique Lafavre and Michel Lacroix to George Marshall for said lot of land of one by forty arpens, and a deed from George Marshall to said defendant, dated the 5th day of March, 1851, for the same lot of land.

And plaintiff avers that said Louis Lacroix, through whose heirs the defendant claims, died on or about the year 1815; that he never lived in St. Louis, and never was an inhabitant of said town; that defendant well knew that said Louis Lacroix had died long before
12 said Joseph Lacroix, made the said proof before said recorder in 1825, and in favor of the said Townsend and of this plaintiff; the said defendant pretended that said proof before the said recorder was made by said Louis Lacroix, and that the heirs and legal representatives of Louis Lacroix were entitled to the benefit of the said certificate of confirmation, and to the confirmation itself.

Plaintiff avers that he is entitled to the benefit of said certificate of confirmation, and to the confirmation itself evidenced by said certificate of confirmation, as the legal representative of Joseph Lacroix and the owner in fee of the said premises sued for.] And so the plaintiff states, that on the 1st day of May, 1855, he was entitled to the possession of said premises, being twelve arpens of land in the form of a parallellogram, to be taken from the east end of a tract of one by forty arpens in the southern part of the Grand Prairie, being the same proven before said Recorder Hunt by Joseph Lacroix, as aforesaid,
and by mistake and accident entered in the name of Louis La-
13 croix, thereby meaning and intending Joseph Lacroix, said lot of land being bounded north by Pierre Barribeau, south by Paul le Grandeur, alias Guitard, and surveyed by the United States as survey No. 1664, in the county of St. Louis. And plaintiff being so entitled to the possession of said premises above described, the defendant afterwards, on the 2d day of May, 1855, entered into said premises and unlawfully withholds from the plaintiff possession thereof.

Defendant was in the possession of said premises at the time of the commencement of this suit. Plaintiff asks for general relief, and for judgment against the defendant for the possession of said premises, and damages for the detention thereof, and for rents and profits thereof in the sum of five thousand dollars, and for the monthly value thereof, and for costs.

B. A. HILL,
With whom is WHITTELSEY,
For the Pl'ff.

COUNTY OF ST. LOUIS, *ss*:

Henry W. Williams, the plaintiff, being duly sworn, says that he believes the foregoing petition and the matters therein as stated are true.

HENRY W. WILLIAMS.

Sworn to and subscribed before me this 10th day of October, 1859.
C. A. MANTZ, *Clerk.*

14 And afterwards, at the September term, 1865, the following further proceedings were had, to wit:

Motion to strike out overruled.

[redacted] MONDAY, *November* 20, 1865.

The motion to strike out parts of amended petition, being heard and fully considered by the court, is overruled.

And afterwards, to wit, on the 4th day of December, 1865, the following bill of exceptions was filed, to wit:

Bill of exceptions.

Be it remembered that the defendant in this action filed his motion to strike out certain parts of the amended petition filed by plaintiff, which motion is in words and figures following:

Motion to strike out.

The defendant in the above-entitled cause comes and moves the court to strike out the following part or portion of the plaintiffs' amended petition, to wit:

Plaintiff further states, that by force of said act of Congress of 1812, the Grand Prairie common field-lot, next north of and adjoining said lot of Joseph Lacroix, was granted and confirmed to Pierre Barribeau upon the same terms, conditions as above stated, and that the said common field-lots of Joseph Lacroix and Pierre Barribeau respectively bounded each other on the north and south. Plaintiff further states that on the 26th day of May, 1824, another act of Con-
15 gress was passed in fulfilment of the stipulations of the treaty of cession at Paris between the United States and the French republic, of the 30th of April, 1803, whereby it was provided that the individual owners or claimants of town lots, out lots or common field lots in adjoining or belonging to said town or village of St. Louis, and other villages named in said act, which lots were confirmed by said act of Congress of the 13th of June, 1812, on the ground of inhabitation, cultivation or possession, prior to the 20th of December, 1803, should proceed within eighteen months after the passage of said act of 26th of May, 1824, to designate their said lots by proving before the recorder of land titles for said State of Missouri the fact of such inhabitation, cultivation or possession, and the boundaries and extent of such claim, so as to enable the surveyor general to distinguish the private from the vacant lots appertaining to the said towns and villages. And it was further provided by said last-named act, that the said recorder of land titles should issue a certificate of confirmation for each claim confirmed, and receive a fee of one dollar for each lot so proved to have been inhabited, cultivated and possessed, to be paid by the respective claimants.

Plaintiff further states, that in pursuance of the provisions of said act of Congress of the 26th of May, 1824, the said Joseph Lacroix on the 3d day of March, 1825, at the city of St. Louis, in said,
16 county aforesaid, appeared before the said recorder of land titles of the United States for the district of Missouri, and then and there proved by a competent witness before the said recorder the fact that he, the said Joseph Lacroix, the claimant, cultivated said lot thirty years before the said day last named, and that he had continued to cultivate the same for ten or twelve consecutive years, and was in possession of the same ever since that time; and the said recorder made an entry of the said proof and evidence in his minutes, and a copy thereof is herewith filed.

The grounds of the defendant's said motion are as follows:

First. Because said part and portion of said amended petition is irrelevant, redundant and immaterial matter.

Secondly. Because the said part or portion of said amended petition does not contain an allegation or statement of fact material or issuable in this case.

The defendant also moves the court to strike out the following part of the plaintiff's said amended petition, to wit:

"And plaintiff further states, that the said recorder of land titles, by accident or mistake, entered upon the said minutes the name of
17 Louis Lacroix as claimant, instead of Joseph Lacroix, the person entitled to the certificate of confirmation, and the said recorder then and there intended to describe and insert Joseph Lacroix as the person who claimed and proved the said lot of land before him; but by mere accident and mistake inserted the name of Louis Lacroix for Joseph Lacroix, and then and there meant and intended by the said name of Louis Lacroix the same identical person, Joseph Lacroix, the claimant who claimed before him and made the proof, as will appear from the minutes of said recorder, wherein the claims of Joseph Lacroix and Louis Lacroix and Pierre Barribeau are inserted, copies of which are herewith filed.

"And the plaintiff further says, that the said recorder of land titles issued and delivered to Joseph Lacroix aforesaid a certificate of confirmation for the aforesaid Grand Prairie common field-lot, in the name of Louis Lacroix, thereby meaning and intending to describe Joseph Lacroix, the claimant who had made the proof as aforesaid before him, and by the same accident and mistake as aforesaid the said recorder inserted the name of Louis for Joseph Lacroix.
18 Plaintiff further avers, that it appears from the face of the minutes of proof before said recorder, that Joseph Lacroix was the person intended who made the proof, and that the mistake in the Christian name of Louis for Joseph Lacroix is corrected in other parts of the said proceedings before the said recorder on the same day."

The grounds of the defendant's said motion to strike out the said last-mentioned part of said amended petition as are as follows:

First. Because the matters and facts alleged in said part last aforesaid of said amended petition are a departure from the original petition in this cause.

Secondly. Because the said part of said amended petition does not state or contain matters or facts that are traversable or material to the plaintiff's action.

Thirdly. Because said part of said amended petition is a statement of a new cause of action, and different from the original cause stated in the original petition filed in this case.

The defendant also moves the court to strike out the following part of the plaintiff's amended petition, to wit:
19 "Plaintiff further states, that the said Joseph Lacroix was an unlearned man, and could not read or write; and although his name by

Bill of exceptions.

Be it remembered that the defendant in this action filed his motion to strike out certain parts of the amended petition filed by plaintiff, which motion is in words and figures following:

Motion to strike out.

The defendant in the above-entitled cause comes and moves the court to strike out the following part or portion of the plaintiffs' amended petition, to wit:

Plaintiff further states, that by force of said act of Congress of 1812, the Grand Prairie common field-lot, next north of and adjoining said lot of Joseph Lacroix, was granted and confirmed to Pierre Barribeau upon the same terms, conditions as above stated, and that the said common field-lots of Joseph Lacroix and Pierre Barribeau respectively bounded each other on the north and south. Plaintiff further states that on the 26th day of May, 1824, another act of Con-
15 gress was passed in fulfilment of the stipulations of the treaty of cession at Paris between the United States and the French republic, of the 30th of April, 1803, whereby it was provided that the individual owners or claimants of town lots, out lots or common field lots in adjoining or belonging to said town or village of St. Louis, and other villages named in said act, which lots were confirmed by said act of Congress of the 13th of June, 1812, on the ground of inhabitation, cultivation or possession, prior to the 20th of December, 1803, should proceed within eighteen months after the passage of said act of 26th of May, 1824, to designate their said lots by proving before the recorder of land titles for said State of Missouri the fact of such inhabitation, cultivation or possession, and the boundaries and extent of such claim, so as to enable the surveyor general to distinguish the private from the vacant lots appertaining to the said towns and villages. And it was further provided by said las-tnamed act, that the said recorder of land titles should issue a certificate of confirmation for each claim confirmed, and receive a fee of one dollar for each lot so proved to have been inhabited, cultivated and possessed, to be paid by the respective claimants.

Plaintiff further states, that in pursuance of the provisions of said act of Congress of the 26th of May, 1824, the said Joseph Lacroix on the 3d day of March, 1825, at the city of St. Louis, in said,
16 county aforesaid, appeared before the said recorder of land titles of the United States for the district of Missouri, and then and there proved by a competent witness before the said recorder the fact that he, the said Joseph Lacroix, the claimant, cultivated said lot thirty years before the said day last named, and that he had continued to cultivate the same for ten or twelve consecutive years, and was in possession of the same ever since that time; and the said recorder made an entry of the said proof and evidence in his minutes, and a copy thereof is herewith filed.

The grounds of the defendant's said motion are as follows:

First. Because said part and portion of said amended petition is irrelevant, redundant and immaterial matter.

Secondly. Because the said part or portion of said amended petition does not contain an allegation or statement of fact material or issuable in this case.

The defendant also moves the court to strike out the following part of the plaintiff's said amended petition, to wit:

"And plaintiff further states, that the said recorder of land titles, by accident or mistake, entered upon the said minutes the name of
17 Louis Lacroix as claimant, instead of Joseph Lacroix, the person entitled to the certificate of confirmation, and the said recorder then and there intended to describe and insert Joseph Lacroix as the person who claimed and proved the said lot of land before him; but by mere accident and mistake inserted the name of Louis Lacroix for Joseph Lacroix, and then and there meant and intended by the said name of Louis Lacroix the same identical person, Joseph Lacroix, the claimant who claimed before him and made the proof, as will appear from the minutes of said recorder, wherein the claims of Joseph Lacroix and Louis Lacroix and Pierre Barribeau are inserted, copies of which are herewith filed.

"And the plaintiff further says, that the said recorder of land titles issued and delivered to Joseph Lacroix aforesaid a certificate of confirmation for the aforesaid Grand Prairie common field-lot, in the name of Louis Lacroix, thereby meaning and intending to describe Joseph Lacroix, the claimant who had made the proof as aforesaid before him, and by the same accident and mistake as aforesaid the said recorder inserted the name of Louis for Joseph Lacroix.
18 Plaintiff further avers, that it appears from the face of the minutes of proof before said recorder, that Joseph Lacroix was the person intended who made the proof, and that the mistake in the Christian name of Louis for Joseph Lacroix is corrected in other parts of the said proceedings before the said recorder on the same day."

The grounds of the defendant's said motion to strike out the said last-mentioned part of said amended petition as are as follows:

First. Because the matters and facts alleged in said part last aforesaid of said amended petition are a departure from the original petition in this cause.

Secondly. Because the said part of said amended petition does not state or contain matters or facts that are traversable or material to the plaintiff's action.

Thirdly. Because said part of said amended petition is a statement of a new cause of action, and different from the original cause stated in the original petition filed in this case.

The defendant also moves the court to strike out the follow-
19 ing part of the plaintiff's amended petition, to wit:

"Plaintiff further states, that the said Joseph Lacroix was an unlearned man, and could not read or write; and although his name by

baptism was Joseph Lacroix, yet he was commonly known among his neighbors and acquaintances as Lecroix Binonette, a nickname, according to the almost universal custom of the old French inhabitants, who rarely were called by their names received in baptism.

"Plaintiff avers that there was no person in the city of St. Louis on the 3d day of March, 1825, who would answer the description of Louis Lacroix, as given by the said recorder, and proved before him as aforesaid, but Joseph Lacroix, the said claimant; that no person was then residing in St. Louis city or county by the name of Louis Lacroix; that no inhabitant of St. Louis town or village prior to the 20th day of December, 1803, was known by the name of Louis Lacroix, and that there was no inhabitant of the town or village of St. Louis, after the said last-mentioned date, by the name of Louis Lacroix."

The grounds of the defendant's said motion to strike out
20 said part of the plaintiff's amended petition, are—

First. Because the said last-mentioned part of the petition does not contain a statement of fact that is material to the plaintiff's original cause of action.

Secondly. Because the last-mentioned part of the petition does not contain or state a traversible fact material to the plaintiff's cause of action.

Thirdly. Because said part is redundant.

The defendant also moves the court to strike out the following portion of the plaintiff's amended petition, to wit:

"Plaintiff further avers, that after said confirmation certificate was issued to Joseph Lecroix in the name of Louis Lecroix as aforesaid, the said Joseph Lecroix claimed and possessed the said common field-lot as above described, until his death, in 1832. And the said Joseph Lacroix left the following heirs-at-law surviving him, being his children, six in number, to wit: Marie Louise, who married John Eymer; Therese, who married Joseph Montague; Julie, who
21 married Savarey Ruelle; Marie, who married Auguste Guibord; Francois Lacroix and Basil Lacroix. Basil Lacroix died shortly after his father, intestate, and without having been married. And the following-named heirs of Joseph Lacroix were in lawful possession of said lot of one by forty arpens of land from the time of the death of said Joseph Lacroix until the dates of the following several conveyances, whereby they mediately and directly conveyed all their right, title, interest and estate in and to said one by forty arpens of land unto Joseph B. Cofield and his heirs, by their several deeds herewith shown to the court, as follows, to wit:

"1. A deed of Francois Lecroix and wife to Joseph B. Cofield, of the 18th December, 1842.

"2. A deed of Joseph Montaigne and Therese, his wife, to Joseph B. Cofield, dated the 13th of December, 1848.

"3. A deed of Savarey Ruelle, and Julie, his wife, to Joseph B. Cofield, dated the 13th day of December, 1848.

"4. A deed from John Eymer and Marie Louise, his wife, to Augustus Guibord, jr., dated the 21st day of December, 1848,

22 of all their interest in said one by forty arpens of land unto him.

"5. Augustus Guibord and Marie, his wife, to Augustus Guibord, jr., dated the 21st day of December, 1848, conveying all their interest in said one by forty arpens of land unto him.

"6. A deed from Augustus Guibord and Editha, his wife, to Joseph B. Cofield, dated the 20th day of December, 1848, conveying all the interest the said Augustus Guibord had acquired by the said deed from John Eymer and wife in and to the said one by forty arpens of land unto the said Joseph B. Cofield.

"By virtue of which deeds the said Joseph B. Cofield became seized of and possessed of all the right, title, interest and estate of the heirs-at-law of the said Joseph Lacroix, deceased. And the said Joseph B. Cofield and wife conveyed the eastern twelve arpens sued for in this action of said tract of one by forty arpens of land to James B. Townsend, by deed dated the 20th day of March, 1849, here shown to the court.

"And the said James B. Townsend and wife, by their attor-
23 ney-in-fact, under power of attorney dated the 20th of March, 1849, conveyed the premises sued for, being twelve arpens on the eastern end of said tract of one by forty arpens, to Henry W. Williams, by deed dated the 21st day of February, 1855, here shown to the court.

"By virtue of which several deeds and conveyances, the said Henry W. Willams, the plaintiff, became seized and possessed of the said eastern twelve arpens of said tract of land of one by forty arpens so proved before the said recorder by said Joseph Lacroix.

"And plaintiff says that said Townsend, through whom plaintiff claims title, was in the actual possession of said lot of land by enclosure in the year 1849, and had a tenant on it."

The grounds of the defendant's said motion to strike out said part of plaintiff's amended petition, are:

First. Because all of the last-mentioned part of the amended petition is redundant and immaterial to plaintiff's cause of action.

Secondly. Because the last-mentioned portion of the amended petition does not contain or state a traversible fact material to the plaintiff's cause.

24 The defendant also moves the court to strike out the following part of the plaintiff's amended petition, to wit:

"And compelled the tenant of said Townsend to attone to him, the said Carpenter; and in support of his wrongful and unlawful act the said defendant pretended that he had acquired title to the said premises by the heirs-at-law of one Louis Lacroix, by a deed of the 6th of August, 1850, from Celestique Lafavre and Michel Lacroix to George Marshall for said lot of land of one by forty arpens, and by a deed from George Marshall to said defendant dated the 5th day of March, 1851, for the same lot of land.

"And plaintiff avers that the said Louis Lacroix, through whose heirs the defendant claims, died in or about the year 1815; that he never lived in St. Louis, and never was an inhabitant of said town;

that defendant well knew that the said Louis Lacroix had died long before said Joseph Lacroix had made the said proof before said recorder in 1825, and in fraud of the said Townsend and of this plaintiff the said defendant pretended that said proof before the
25 said recorder was made by said Louis Lacroix; and that the heirs and legal representatives of Louis Lacroix were entitled to the benefit of the said certificate of confirmation, and of the confirmation itself.

"Plaintiff avers that he is entitled to the benefit of said certificate of confirmation, and to the confirmation itself, evidenced by said certificate of confirmation, as the legal representative of Joseph Lacroix, and the owner in fee of said premises sued for."

The reasons why the defendant moves the court to strike out said part of amended petition, are:

First. Because the said part of said amended petition last mentioned is redundant and irrelevant.

Secondly. Because the said portion of the amended petition is immaterial, and contains no issueable statement of facts.

And lastly. this defendant moves to strike out the several parts of the said plaintiff's said amended petition hereinbefore set forth, for the following reasons:

First. Because the said parts of said amended petition are irrelevant and redundant.

Secondly. They are immaterial and not traversable.

26 Thirdly. Because all of said parts of said amended petition, as hereinbefore set out, are a statement of a cause of action different from the cause of action stated in the plaintiff's original petition in this case.

J. M. KRUM,
C. C. McLURE,
Atty's for Deft.

Which said motion the court overruled, and at the time the defendant duly excepted to the opinion of the court in overruling said motion; and now ask that his bill of exceptions may be signed and made a part of the record, which is done.

JAMES C. MOODY, *Judge.*

And afterwards, in the Circuit Court of St. Louis county, to wit, on the 27th day of July, 1866, the following amended answer to the plaintiff's amended petition was filed, which is in the words and figures following, to wit:

Amended answer.

The defendant, by leave of court first had and obtained, comes and files this his amended answer to the amended petition of the plaintiff; and the defendant denies that the plaintiff was, on
27 the first day of May, 1855, entitled to the possession of the land and premises described in his petition; nor has he at any

time since been, nor is he now, entitled to the possession of said premises. The defendant denies that he at any time unlawfully entered into said premises, and the defendant denies that he unlawfully withholds the possession of said premises from the plaintiff.

And for further answer, this defendant states that he does not know, and he has not knowledge or information sufficient to form a belief, whether or not Joseph Lacroix was for many years an inhabitant of the town or village of St. Louis, as alleged in the plaintiff's said amended petition.

And for further answer, this defendant denies that there was granted to said Joseph Lacroix, by the act of Congress of June 13, 1812, a common field-lot of one arpent in front by forty arpents in depth, in the Grand Prairie common fields of St. Louis, bounded north by a common field lot of Pierre Barribeau, and south by a common field lot of Paul Le Grandeur, otherwise Guitard, as stated in the plaintiff's petition.

28 This defendant states that the common field-lot described in the plaintiff's petition, and now known and designated as United States survey No. 1664, was neither granted nor confirmed to Joseph Lacroix, but, on the contrary, the said common field-lot was granted and confirmed by the government of the United States to Louis Lacroix more than thirty years before this suit was instituted.

The defendant further states, that he does not know, and has not knowledge or information sufficient to form a belief, whether or not Joseph Lacroix, on the 3d day of March of 1825, appeared before the recorder of land titles for the district of Missouri, and then and there proved before said recorder that he, said Joseph Lacroix, cultivated said common field lot thirty years before said last-mentioned day, or that he had continued to cultivate the same for ten or twelve consecutive years, or that he was in possession of said lot at that time or any time; but this defendant denies that the said recorder of land titles by accident or mistake entered upon his minutes the name of Louis Lacroix as claimant instead of Joseph Lacroix.

This defendant denies that said recorder then and there or at any other time intended to describe and to insert Joseph Lacroix in his minutes as the person who claimed and proved said lot of land before said recorder.

29 This defendant denies that said recorder by accident or mistake inserted in his minutes the name of Louis Lacroix for Joseph Lacroix. This defendant denies that said recorder then and there meant and intended by the name of Louis Lacroix the person called Joseph Lacroix.

This defendant further states, that he has been informed, and believes his information true, and therefore charges the fact to be, that on or about the 3d day of March, A. D. 1825, Louis Lacroix in the pursuance of and in conformity with the laws of the United States appeared before the recorder of land titles for Missouri district and proved, by competent witnesses, that he, the said Louis Lacroix, prior to the 20th December, 1803, inhabited, cultivated and possessed the said common field-lot in the Grand Prairie common field of St. Louis,

being the same lot that has since been designated by the United States survey No. 1664, and that said recorder of land titles, after said Louis Lacroix had made said proof aforesaid, entered the same in his the said recorder's minutes and confirmed said common field lot to said Louis Lacroix.

And for further answer, this defendant denies the said recorder of land titles issued and delivered to Joseph Lacroix a certificate of confirmation for the aforesaid Grand Prairie common field lot
30 in the name of Louis Lacroix. This defendant says that said recorder issued and delivered his certificate of confirmation for the aforesaid common field lot to and in the name of Louis Lacroix, and the defendant denies that said recorder of land titles in the issuing said certificte of confirmation in the name of and to Louis Lacroix intended or meant to describe Joseph Lacroix therein; and the defendant denies that said recorder inserted the name of Louis Lacroix in said certificate by accident or mistake.

This defendant denies that it appears from the face of the minutes of proof before the said recorder that Joseph Lacroix was the person intended, and who made the proof before said recorder; and this defendant denies that there is any mistake in the minutes of proceedings before said recorder.

This defendant does not know, and has not knowledge or information sufficient to form a belief, whether or not Joseph Lacroix (if any such man ever lived) was an unlearned man, or whether or not he was known among his neighbors as Lacroix Bissonette.

31 The statements in the plaintiff's petition that there was no person in the city of St. Louis on the 3d day of March, 1825, answering the description of Louis Lacroix, that no person was then residing in St. Louis by the name of Louis Lacroix; that no inhabitant of St. Louis town or village prior to 20th of December, 1803, was known by the name of Louis Lacroix, and that there was no inhabitant of the town or village of St. Louis after the last-named date by the name of Louis Lacroix, are untrue.

This defendant denies that Joseph Lacroix after said recorder issued his certificate of confirmation to Louis Lacroix as aforesaid, claimed and possessed the said common field lot, as stated by the plaintiff.

This defendant does not know, and has not knowledge or information sufficient to form a belief, whether or not the said Joseph Lacroix died leaving six or any children surviving him; nor whether the persons named in the plaintiff's petition, and designated as the children and heirs of said Joseph Lacroix, were in fact his children and heirs.

This defendant denies that the heirs of Joseph Lecroix or
32 either of them were, from the time of his death, in the lawful possession of said lot of one by forty arpents of land, nor were the said heirs, or either of them at any time, in the lawful possession of said land.

This defendant does not know, and has not knowledge or information sufficient to form a belief, whether or not the several deeds mentioned in the plaintiff's petition are genuine, nor whether they are

either of them were made by the heirs or legal representatives of said Joseph Lacroix.

This defendant denies that Henry W. Williams, the plaintiff, at any time became seized or possessed of the twelve arpents of land sued for in this action.

This defendant denies that James B. Towsend was in possession of said lot of land by enclosure in the year 1849, or had a tenant on it.

This defendant denies that he, in 1851, unlawfully and wrongfully entered into the possession of the land sued for in this action,
33 and compelled the tenant of said Townsend to attorn to this defendant.

This defendant says that in the early part of the year 1851, for a valuable consideration, to wit, the sum of six thousand dollars paid at the time of purchase, he purchased and acquired the legal title to the land sued for in this action, from George Marshall, who had on the 6th day of August, 1850, acquired the same by deed from the heirs and legal representatives of Louis Lacroix, the confirmee; and very soon after his said purchase defendant peaceably and lawfully entered into and upon said lot and premises, and he has ever since held possession of said premises.

This defendant further states that at the time he acquired the title to the said lot and premises, and took possession thereof as aforesaid, he had no knowledge or notice whatever that the legal representatives of Joseph Lacroix or the plaintiff either claimed or petended to claim said lot and premises.

This defendant denies that he knew or was informed at the time he acquired the title to said lot of land, and entered into possession thereof as aforesaid, that Louis Lacroix died in or about the
34 year 1815, or before the said proof before the recorder of land titles in respect to said lot was made, in 1825.

This defendant denies that the plaintiff is entitled to the benefit of said certificate of confirmation, or to the confirmation itself; and this defendant denies that the plaintiff is the legal representative of Joseph Lacroix in respect to the land sued for; and this defendant denies that the plaintiff is the owner of the fee of said land.

And for further answer this defendant states that the office of recorder of land titles for the district of Missouri was created by law about the year 18 , and that said office has been continued in the territory and State of Missouri for half a century last past.

The records and archives of the recorder of land titles have been during all that time public records pertaining to lands and land titles in said territorry and State, and all parties and persons who purchased or dealt in land in said territory and State confided in and
35 relied upon the records and archives kept in the office of the recorder of land titles for the evidence of confirmations to lands granted by the government of the United States.

And this defendant says that he purchased the land sued for in this action in good faith, and paid a valuable consideration therefor; and inasmuch as the said records and archives of the office of the recorder of land titles, at the time of his said purchase, showed that

the land sued for had been confirmed by the United States to Louis Lacroix, and that a certificate thereof had been granted in his favor, this defendant confided in the said records and archives; and this defendant paid his money for said land in good faith, and without notice or information from any one that the plaintiff or any other party pretended to have or claim any interest in or right to said land.

After the said land had been, in due form confirmed by the government of the United States to Louis Lacroix, and the same had been duly recorded in the office of the recorder of land titles, as aforesaid, more than thirty years elapsed before the plaintiff, or any party under whom he claims, set up or pretended to have any
36 right or interest in said land.

Wherefore the defendant says, that the plaintiff and all the parties under whom he claims, as well also the parties who claim the said land under the plaintiff, are effectually barred and precluded by lapse of time from having the relief sought and prayed for in the plaintiff's amended petition.

And for further answer this defendant says, that inasmuch as the said confirmation of the said land to Louis Lacroix, as aforesaid, was made by the government of the United States, and therefore has the force and effect of a grant or patent, this court has no jurisdiction or authority to vacate, set aside or reform the said confirmation, for the reason that the jurisdiction of such cases belongs exclusively to the courts of the United States.

And for further answer the said defendant says, that he has been for more than ten years prior to the filing of said amended petition in the open, exclusive and notorious possession of the tract sued for, and the larger tract of which it forms a part, adverse to the
37 said plaintiff and those under whom he claims, which possession he sets up in bar of this suit and the cause of action set up in said amended petition.

KRUM, McCLURE, GLOVER & SHEPLEY,
For Def'ts.

Chas. J. Carpenter, being duly sworn, on his oath states that the foregoing answer, and the matters and things as therein stated, he believes to be true.

C. J. CARPENTER.

Sworn to and subscribed before me this 7th day of February, 1866.
F. A. H. SCHNEIDER, *Cl'k.*

And afterwards, at the December term, 1866, of said Circuit Court, at the special term thereof, the following further proceedings were had, to wit:

Decree.

MONDAY, *December* 3, 1866.

Now at this day come the parties aforesaid by their respective attorneys and solicitors, and the proofs and evidence having been duly heard in this suit by the court, by consent of the parties hereto, the court excludes as evidence in this suit, on the hearing, the minutes of the evidence taken before the recorder, Theodore
38 Hunt, as incompetent and irrelevant; and the court doth thereupon order and decree as follows:

1st. That there was not any Louis Lacroix inhabiting St. Louis, now city of St. Louis, prior to the 20th day of December, 1803, or on the 13th day of June, 1812, or on the 3d day of March, 1825, qualified to claim the common field-lot now known as United States survey No. 1664, in the Grand Prairie common field of St. Louis, confirmed by the act of Congress of the 13th day of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri;" and that no person by the name of Louis Lacroix cultivated said field lot in the Grand Prairie common field prior to the 20th day of December, 1803, or at any other time.

2d. That there was a Joseph Lacroix who came within the terms of the act of Congress of the 13th day of June, 1812, and that said Joseph Lacroix was an inhabitant of St. Louis, and cultivated said common field lot now known as United States survey, No 1664, in the Grand Prairie common field of St. Louis, prior to the 20th day of November, 1803, and that said Joseph Lacroix continued to
39 be an inhabitant of St. Louis until the year 1832; and that the said Joseph Lacroix claimed the said common field lot before the recorder of land titles on the 3d day of March, 1825, and was the same person to whom the said recorder of land titles on the 3d day of March, 1825, issued the certificate of confirmation, by the name of Louis Lacroix; and that said Joseph Lacroix was then and there entitled to the benefit of said certificate of confirmation.

3d. That said Joseph Lacroix was seized in fee simple of said common field lot now known as United States survey, No. 1664, on the 13th day of June, 1812, by force of said act of Congress of the 13th day of June, 1812; that said Joseph Lacroix died in the year 1832, leaving as his heirs-at-law the following legitimate children, to wit: Marie Louise, who married John Eymer; Therese, who married Joseph Montaigne; Julie, who married Savany Ruelle; Marie, who married Auguste Guibord; Francis Lacroix and Basil Lacroix; that said Basil Lacroix died shortly after his father, intestate and unmarried; and that all the title, right, estate and property of said Joseph Lacroix, and of his said heirs-at-law, in and to the twelve
40 arpens of land sued for, in the form of a parallelogram on the eastern end of said common field lot now known as U. S. survey No. 1664, in the Grand Prairie common fields of St. Louis, has passed to and vested in Henry W. Williams in fee simple prior to the time of the filing of the original petition in this case, to wit,

on the 21st day of February, 1855, by virtue of title deeds set forth in plaintiff's amended petition, and read in evidence on the hearing of this cause; and that said Williams, since the filing of the said amended petition in this cause, has conveyed in fee simple to the co-plaintiffs, Melvin L. Gray and Sanford B. Kellogg, all of the said twelve arpens of land sued for, that is, lying west of Grand avenue, and that said Gray and Kellogg are seized thereof in fee simple, as tenants in common; and that all of the said twelve arpens of land sued for, lying east of Grand avenue, in the city of St. Louis, the said Williams is now seized in fee simple.

4th. That the plaintiff's grantors, Joseph B. Cofield and
41 James B. Townsend, and their tenants, occupied and possessed the said premises sued for in the years 1848 and 1849, and thereby prevented the running of the statute of limitations in this cause; and that the plaintiffs, as grantors, by deraignment of title of the heirs-at-law of Joseph Lacroix, as aforesaid, are entitled to recover the possession of the said twelve arpens of land described in plaintiff's petition of and from the defendant. And the court doth further find the rents and profits of the said land sued for, from the commencement of this suit to this day, to be one thousand dollars, and the monthly value thereof to be fifty dollars; for which possession, rents and profits, and monthly value and costs, the plaintiffs are entitled to judgment and execution against the defendant, with costs.

And afterwards, at the same term, the following further proceedings were had, to wit:

Motion for new trial overruled.

SATURDAY, *December* 15, 1866.

The motion for a new trial being heard and fully considered by the court, it is ordered by the court that the same be over-
42 ruled; whereupon the defendants, by their attorney, pray for an appeal to the general term, which is allowed, and fifteen days' time is given them to file their bill of exceptions herein.

And afterwards, at the same term, the following further proceedings were had, to wit:

Stipulation filed.

FRIDAY, *December* 21, 1866.

Now come the plaintiffs by their attorney, and file a stipulation herein in words and figures following:

"In the above cause plaintiffs consent that the defendants have until the 10th day of January, 1867, in which to file his bill of exceptions in said cause.

"B. A. HILL, *Att'y for Pl'ff.*"

And afterwards, at the same term, the following further proceedings were had, to wit:

Stipulation filed.

TUESDAY, *January* 29, 1867.

Now comes the parties, by their respective attorneys, and file a stipulation herein in words and figures following, to wit:

"The plaintiffs in the above-entitled cause consent that
43 the time for filing the bill of exceptions therein be extended twenty days from this date.

(Signed) "B. A. HILL, *Att'y for Pl'ff.*"

Bill of exceptions.

And afterwards, to wit, on the 16th day of February, 1867, the following bill of exceptions was filed, which bill of exceptions is in the words and figures following, to wit:

Be it remembered, that at the trial of this cause the plaintiff read the deposition of Augustus H. Evans, as follows:

Deposition of A. H. Evans.

APRIL 13, 1858.

Deposition of Augustus H. Evans, a witness produced, sworn and examined at the office of Charles H. Tilson, esq., in the city and county of St Louis and State of Missouri, before the undersigned, a notary public, within and for said county, in a certain case now pending in the St. Louis Land Court of St. Louis co., Missouri, wherein Henry W. Williams is plaintiff, and Charles J. Carpenter defendant, on the part of the plaintiff, said plaintiff being present in person and represented by B. A. Hill, esq., his counsel, and
44 said defendant being represented by Chester Harding, esq., his counsel.

Augustus H. Evans, being produced, sworn and examined, on the part of the plaintiff, deposes and says: "I came to St. Louis in 1817; from 1817 to 1821 I was trading backward and forward from St. Louis to Howard county on the river; a part of that time I was with the surveyors, learning the mode of making public surveys. I had surveyed before. From 1821 to this time I have resided in St. Louis. In 1822, I went into the surveyor general's office as clerk, and remained there until 1836. I knew Joseph Lacroix and Pierre Barribau. As well as I remember, Joseph Lacroix lived near the corner of Third and Olive streets, in the city of St. Louis. He used to work at day's work at all kinds of work that he could make money at. He worked for me on the boat, repairing it, in the winter of 1817 or spring of 1818, I do not remember which. I knew him as well as I knew anybody in St. Louis at that time. [I have been at the office

of the recorder of land titles to-day, and examined Hunt's minutes,
volume one, pages three and four, containing the proofs
45 taken, &c., before Hunt, under the act of the 26th of May,
1824. I examined the handwriting on those pages, and the proofs were in the handwriting of Hunt, and the signatures were attested by M. P. Leduc. The date of those papers was March 3, 1825. I frequently had business at the office of the recorder of land titles in those days. About the time the proofs were taken in regard to those village lots, and Grand Prairie field lots.] I was in the recorder's office at different times almost every day, and while there I saw Lacroix and Barribeau proving up their lots. I don't recollect what lots they were, but I know they were in the Grand Prairie. I don't remember whether they were proving up any village lots or not. I only know about the Grand Prairie lots, which I offered to buy of them. As far as I recollect their names, they were called Jo. Lacroix and Pierre Barribeau. It is a long time ago, and we generally called them by their surnames. Those two men were there proving up their lots in the Grand Prairie; I don't know whether
they had just begun or had finished making the proof. I don't
46 remember the month except as I see it on the record. I think
it was in the year 1825. My impression then was that they could not identify the location of their lots, and I did not buy them, because they could not locate them. [I never knew any other old Frenchman here old enough to cultivate before the change of government by the name of Louis Lacroix. I can't say how I got the impression, whether from hearing the testimony or from reading the depositions, but my impression is, that Lacroix and Barribeau were witnesses for each other, in proving up their possession of the Grand Prairie lots.] I was listening to the proofs in the office of the recorder of land titles, in regard to the Grand Prairie lots, because I wanted to buy the claims that I could locate, and I wanted to buy the claims of Lacroix and Barribeau, but did not buy them, because they could not locate them satisfactorily to me; and my best impression is, that I was present and heard them testify in regard to their claims in the Grand Prairie.

["The reason why I did not buy the lots of Lacroix and Bar-
47 ribeau was that Baccare and Dodier told me they did not re-
collect the location of Lacroix and Barribeau's lots, or that they had cultivate them. The lot I wanted to buy of Lacroix was a lot in the Grand Prairie. I don't remember the exact size of the lot, but it was not less than an arpen. My impression is that it was one arpen by forty. The claim I offered to buy was the claim of Joseph Lacroix, which was proved up before Hunt. I offered to buy it at the time it was proved up, and would have bought it, if the location had been more satisfactory."]

The plaintiff here closed, whereupon Chester Harding, esq., attorney for defendant, proceeded to cross-examine said deponent, who continued to depose as follows, in answer to questions propounded to him.

Cross-examination.

I did not know where the Lacroix claim was said to be located, nor in what portion of the Grand Prairie he claimed it to be, nor whether he claimed it to be north or south of Barribeau; nor whether there was other Lacroixs who also claimed lots in the Grand Prairie.

I did not come to the conclusion that Joseph Lacroix had no
48 lot there, but that it could not be located. I can't say that I heard Barribeau testify in regard to Lacroix's claim, but I was in the office when he and Barribeau were present, and read the evidence on the record, or heard them testify. Hunt kept his office at that time on the right hand side of Second st., going down, and near Madame Saugrain's. The surveyor general's office at that day was either on Fourth st., at Roderick's, or at Mullikin's on Second st., near Adam Lemp's brewery. They had moved it about that time, and I do not remember in which place it was located. While I was in the surveyor general's office, and since that time, I have had occasion, almost constantly, to refer to the proof taken before Hunt. I recollect that I was in the office of the recorder of land titles when they were proving up their lots, and saw Barribeau and Lacroix there; but whether I heard them testify, or read their deposition after they had testified and as it lay upon the table before me, I cannot say. I wanted to buy their lots and they wanted to sell them,

and I would have done so, had they proved them up to my
49 satisfaction. I spoke to them in the recorder's office about purchasing their claims. There were other Lacroixs here, who were Indian traders, but I don't remember any by the name of Louis Lacroix. These other Lacroixs were not old enough to have cultivated land prior to 1803. One of those Lacroix married Miss Hays of Cahokia. He died; and I don't know what became of the others.

A. H. EVANS.

I, James B. Goff, the aforesaid notary, do hereby certify that the foregoing deposition was taken before me on the 13th day of April, 1858, between the time of 8 o'clock a. m. and 6 o'clock p. m., at the place mentioned in the caption hereof; and that A. H. Evans, the deponent, was by me duly sworn, before he gave his testimony, to testify the truth, the whole truth and nothing but the truth of his knowledge touching the matters in the cause aforesaid; and that his deposition was then and there reduced to writing by me in his presence, and after being read over to him, subscribed by him in my presence, on the day and between the hours, and at the place in that behalf aforesaid. I further certify that the paper marked "A," and hereto annexed, was filed by the parties as a stipulation and exhibit to be attached hereto.

In witness whereof I have hereto set my hand and affixed
50 my official seal, at the city of St. Louis aforesaid, the day and year above written.

[SEAL.] JAMES B. GOFF, *Notary Public.*

At the time said deposition was offered in evidence the defendant objected to the reading of the parts in said deposition that are included within [brackets,] on the ground that the parts so objected to are not competent evidence against the defendant in this case; and also, that said part of said testimony, so objected to, is hearsay evidence; but the court overruled the said objections of the defendant to said testimony, and allowed the same, as to the two first portions so marked, to be read, and excluded the last; and the defendant at the time duly excepted.

Plaintiff then called as witness Frederick Mosberger, who testified as follows:

Testimony of Mosberger.

I am recorder of land titles for the United States in Missouri. I am familiar with the record and archives in said office. I know the handwriting of Theodore Hunt, formerly recorder of land titles at St. Louis, and I was personally acquainted with M. P. Leduc.

51 I was employed in the surveyor general's office as early as 1844. I have examined the proofs of the claims of Joseph Lacroix, made before Recorder Hunt. The proofs in Hunt's minutes in respect to the arpent of land in controversy in this suit, and the tract of Pierre Barribeau, is in the handwriting of Recorder Hunt; the alteration, the signature, is in the handwriting of M. P. Leduc. In the claim of Pierre Barribeau, the affidavit is in the handwriting of the said Hunt. The name Louis Lacroix at the commencement is in Hunt's handwriting, and the signature Joseph Lacroix, his × mark, is also in Hunt's handwriting.

The defendant, at the time, excepted to the plaintiff's giving said evidence in respect to said Barribeau claim, on the ground that the same is incompetent; but court overruled the defendant's objection, and allowed the evidence objected to be admitted, and defendant, at the time, duly excepted.

I find, from an examination of the records, that Joseph Lacroix claimed several lots in the village of St. Louis, but I do not find that he made any proof before Recorder Hunt in respect to the lot in the Grand Prairie common fields of St. Louis, unless it was in respect to the lot in controversy in this suit, and the lot of Pierre Barribeau.

52 The defendant, at the time, objected to this testimony of the witness in respect to his examination of the records and proofs made by said Lacroix, as last aforesaid, on the ground that the same is incompetent; but the court overruled the defendant's objection, and allowed said evidence to be admitted, and defendant, at the time, duly excepted.

Plaintiff then read in evidence United States survey No. 1664, in name of Louis Lacroix, as follows:

Survey No. 1664.

Plat and description of a tract of land of 34.11 acres situate in the Grand Prairie common field of St. Louis, in township 45 north of

the base line, range 7 east of the 5th principal meridian, in the State of Missouri, executed in the years 1850 and 1855, by William H. Cozzens, deputy surveyor, under instructions from the surveyor general for Illinois and Missouri, dated the 9th day of May, 1846, and the 22d of February, 1855; this being the tract of one by forty arpens confirmed to Louis Lacroix by the act of Congress of the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," the extent and boundaries
53 wher were proven on the 3d of March, 1825, before Theodore Hunt, United States recorder of land titles, in the State of Missouri, in conformity of the provision of the act of Congress of the 26th of May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, one thousand eight hundred and twelve, entitled 'An act making further provisions for settling the claims to land in the Territory of Missouri.'"

See Recorder Hunt's minute book, No. 1, pages 3 & 4, in the office of the recorder of land titles. See also Hunt's list, No. 4, in the office of the surveyor gen'l.

[For diagram see original p. 54.]

55 *Description.*

Beginning at a stone fifteen inches long, eight inches wide, four inches thick, the southeast corner of Pierre Barribeau's survey, number one thousand six hundred and sixty-three, and the northeast corner of this survey; thence south twenty-eight degrees and forty-five minutes west, two chains and ninety-one and two-thirds links, to a point in the middle of the Olive st. plank road, the northeast corner of survey numbered one thousand six hundred and sixty-five, in the name of Louis Laroche's legal representatives, and the southeast corner of this survey; thence north sixty-one degrees west with the northern boundary of the Louis Laroche survey, and with the middle line of the Olive st. plank road, at four chains and eighty-five links, the eastern edge of Grand avenue; at six chains and seven links, the western edge of Grand avenue; at seven chains and thirty-one links, the toll-gate of the road; at forty-six chains and twenty links, a culvert over a branch five links wide, running southwest; at sixty-five chains and sixty-one links, a cedar post, at the intersection with the west boundary of section sixteen in township forty-five north,
56 range seven east, which is also a line of survey numbered two thousand seven hundred and twelve, in the name of James Conway, or legal representatives; at seventy-five chains and ninety-six links, a culvert over a brach five links wide, running southwest; at one hundred and thirteen chains and ten links, a stone twenty and a half inches long, six inches wide, three and a half inches thick, at the intersection with the west boundary of the James Conway survey, which is also a line of survey numbered two thousand five hundred, in the name of Joseph Hunot, or legal representatives, from which the northwest corner of the James Conway sur-

vey, and the southwest corner of survey numbered two thousand six hundred and ninety-two, in the name of Joseph Genereux, or legal representatives, bears north fifty-seven links distant, and at one hundred and sixteen chains and ninety one links, a stone ten inches long, seven and a half inches wide, four inches thick, the northwest corner of the Louis Larouche survey, and the southwest corner of this survey. Thence north twenty-eight degrees and forty-five minutes east; at two chains and ninety-one and two-thirds links, a stone ten and a half inches long, eight and a half inches wide, and three inches thick, the southwest corner of the Pierre Barribeau survey, and
57 the northwest corner of this survey; thence south sixty-one degrees east, with the southern boundary of Pierre Barribeau survey; at two chains and twelve links, a stone nine inches long, six inches wide, four inches thick at the intersection with the line between the Joseph Genereux and the Joseph Hunot surveys, from which the northwest corner of the James Conway svrvey, and the southwest corner of the Joseph Genereux survey, bears southerly two chains and seventy-eight links distant; at seven chains and eighty-two links, a stone eleven inches long, seven inches wide, three inches thick, at the intersection of the line between the Joseph Genereux and the James Conway surveys, from which the corner common to said surveys, in the line of the Joseph Hunot survey, bears westerly five chains and two links distant; at twelve chains and eighty-six links, a point in the middle of the Olive street plank road; at forty-two chains and twenty-two links, a branch five links wide runs southwest; at forty-nine chains and sixty-two links, a stone thirteen inches long, nine inches wide, five and a half inches thick, at the intersection with the west boundary of section sixteen, which is also a line of the James Conway survey, from which the northwest corner of section sixteen, and a corner to the James Conway survey,
58 bears northerly, eighty links distant; at seventy-one chains and twelve links, a branch five links wide runs southwest; at eighty-two chains and seventy-nine links, a branch five links wide runs southwest; at one hundred and ten chains and ninety-six links, the western edge of Grand avenue; at one hundred and twelve chains and sixteen links, the eastern edge of Grand avenue; and at one hundred and sixteen chains and ninety-eight, the beginning corner.

Statement of the interferences of survey No. 1664 *with other surveys previously made.*

The following surveys are founded upon certificates issued by Frederick Bates, United States recorder of land titles in the Territory of Missouri, under the provision of the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

1st. Survey No. 2500, certificate No. 161, issued to Joseph Hunot, or legal representatives, for 480 acres, on the 12th day of August,

1816; located on the 16th of June, 1818, by Rufus Easton; surveyed by Joseph C. Brown, on the 23d day of June, 1819;
59 patent certificate No. 404, issued on the 2d day of February, 1833, by the recorder of land titles in the State of Missouri.

Area of the interfering part=0.86 acres.

2d. Survey No. 2692, certificate No. 19, issued to Joseph Genereux, or legal representatives, for 160 acres, on the 12th of November, 1815; located by Joshua Barton on the 12th of December, 1817; surveyed by Joseph C. Brown, on the 23d of June, 1819; patent certificate No. 308, issued by the recorder of land titles, on the 4th of February, 1823.

Area of the interfering part 0.70 acres.

3d. Survey No. 2712, certificate No. 348, issued to James Conway, or legal representatives, for two hundred arpens, on the 20th of November, 1817; located on the 16th day of June, 1818, by Taylor; Berry and Matthias McGirk; surveyed by Joseph C. Brown, on the 23d of June, 1819; patent certificate No. 322, issued by the recorder of land titles on the 20th of May, 1823.

Area of the interfering part 13.16 acres.

4th. Section 16, reserved for the schools, surveyed in the
60 year 1818, by Joseph C. Brown.

Area of the interfering part 19.39 acres.

OFFICE OF THE SURVEYOR GEN'L FOR ILLINOIS AND MISSOURI, ST. LOUIS, *M'ch* 19, 1857.

The foregoing plat and description of survey numbered one thousand six hundred and sixty-four are this day approved, as recorded on page two hundred and eighty-nine and two hundred and ninety of this book.

(Signed) JNO. LOUGHBOROUGH,
Surveyor General.

See record, book F, p 289 and 290.

OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, 28*th February*, 1866.

This is to certify that the foregoing is a correct copy from the record, as found in pages 289 and 290, book F of the series of surveys of private confirmed land claims in Missouri, which book is remaining of file in this office.

FRED'K MOSBERGER, *Recorder*.

[5-cent. rev. stamp, cancelled.]

Plaintiff then read in evidence a tabular statement of con-
61 firmations of land to Pierre Barribeau, and Joseph Lacroix, and others, as follows :

Registry of certificates of confirmation on town lots, out-lots and common field lots, issued by the recorder of land titles.

In whose name issued.	No. of certificate.	Date.	Situation.	Remarks.	Quantity.	
					Feet, French.	Arpens.
		1825.				
Joseph Lacroix	No. 2	March 3	St. Louis	East by third st., north by a lot occupied by Michael Bertrand; west by J. Warner, and south by north C street.	120 by 160	
Pierre Barribeau	No. 3	March 3	St. Louis	East by Second street, north by north F street, west by third st, and south by a lot occupied by B. Meechum and Gen'l Rector.	164 by 225	
Louis Lacroix	No. 4	March 3d.	St. Louis, Big Prairie.	Bounded on the north by Pierre Barribeau, south by Paul La Grandeur, (alias Guitard,) and east and west by vacant lots.	----------	One by forty.
Pierre Barribeau	No. 5	March 3	St. Louis, Big Prairie.	Bounded on the north by a lot formerly belonging to Benito Vasquez, on the south by Joseph Lacroix, and east and west by vacant land.	----------	One and a half by forty.
Joseph Lacroix's legal representatives.	----------	Nov 2d	Town of St. Louis.	Lot in square No. 62 bounded north by north C street, east by Church st., and south and west by parts of same square.	120 feet front by 150 deep.	
Joseph Lacroix's legal representatives	----------	Nov. 22d.	Town of St. Louis.	Lot in square 62, bounded east and south by parts of same square, north by north C street, and west by Third street.	120 by 150 f't.	

62 OFFICE OF THE U. S. RECORDER OF LAND TITLES,
ST. LOUIS, *February* 28, 1866.

This is to certify that the above heading is a correct copy, and that the next following items are correct abstracts from the books held as a part of the records in this office, which book is generally termed and known as "Hunt's list;" the said book was made out by Theodore Hunt, U. S. recorder of land titles, under the provisions of the third section of the act of Congress approved on the 26th May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled 'An act making further provisions for settling the claims to land in the Territory of Missouri.'"

FRED'K MOSBERGER, *Recorder.*

[U. S. rev. stamp, 5 cents, cancelled.]

Defendant, at the time excepted to the reading of said tabular statement, on the ground that same is incompetent; but the court overruled defendant's objection, and allowed same to be read; and defendant duly excepted.

63 Plaintiff then read deposition of Charles Sanguinett, as follows:

Charles Sanguinet, of lawful age, being duly sworn and examined on the part of the plaintiff, deposeth and saith:

Testimony of Sanguinet.

Direct examination by the plaintiff's attorney, May 10, 1866:

Question 1. What is your age?

Ans. I am 83 years and 8 months of age.

Question 2. Where were you born?

Answer. St. Louis; and am too old and infirm to attend court.

Question 3. How long have you lived in St. Louis?

Answer. Ever since my birth, except for the last thirty years. I have lived in the county of St. Louis part of the time, on the Belle Fontaine road, and part of the time on my farm in Central township.

Question 4. Did you know a man in St. Louis before the change of government by the name of Joseph Lacroix, dit Bossonette? If so, how long did you know him?

Answer. Yes; I knew him about twenty years before the change of government. I cannot say exactly.

Question 5. Do you remember the old cross on the Rue de
64 la Grange or Barre street, at the corner of the cross street now called Olive street?

Answer. I do; it was on the corner of Third and Olive streets, in the city of St. Louis; I think so.

Question 6. Where did Joseph Lacroix, dit Bissonette, live before the change of government?

Answer. He lived in Second street, in St. Louis. He afterwards moved further west, either on 4th or 5th, cannot tell which.

Question 7. Can you remember whether he ever lived near the Calvary, on Third street?

Answer. No; he lived further west, inside of the pickets. His lot run to Third street; cannot say exactly how far his house was of Third street.

Question 8. How long did he live on this lot on Third street?

Answer. I cannot say precisely, but I believe about seven or eight years, or more.

Ques. 9. Did you know Pierre Barribeau before the change of government?

Ans. Yes.

Ques. 10. Where did he live?

65 Ans. In St. Louis, on the same street that Joseph Lacroix lived on.

Ques. 11. Do you remember whether Joseph Lacroix ever cultivated any field lot in the Grand Prairie common fields of St. Louis?

Ans. Yes; I know he cultivated there, but I do not know whether he owned the lot.

Question 12. Was his cultivation in the Grand Prairie before or after the change of government, or 1803?

Ans. Yes; he cultivated there before the change of government.

Ques. 13. Do you know whether Pierre Barribeau ever cultivated a lot in the Grand Prairie common fields; and if so, when?

Ans. I know that he cultivated a lot there before the change of government.

Ques. 14. Do you remember of ever seeing Pierre Barribeau and Joseph Lacroix cultivating lots in the Grand Prairie at the same time or in the same year, before the change of government?

Ans. I remember their cultivating different lots in the Grand Prairie at the same time and the same year, before the change of government.

66 Question 15. Can you remember now where the lot cultivated by Joseph Lacroix in the Grand Prairie common fields is now situated?

Answer. I know where he cultivated, but I cannot tell where it is now.

Question 16. Do you think you could tell if you went to the Grand Prairie?

Answer. I don't think I could.

Question 17. Could you tell where Barribeau's old cultivation is now in the Grand Prairie?

Ans. No, I could not.

Ques. 18. Can you remember if the lots cultivated in the Grand Prairie by Joseph Lacroix and Pierre Barribeau were or were not adjoining each other before the change of government?

Ans. No; I cannot remember whether they were or not.

Ques. 19. Was Joseph Lacroix married before the change of government?

Ans. Yes, long before, and had four or five children.

[Question 20. Did you ever know any man by the name of Louis,

Lacroix, living in St. Louis before the change of government?
67 Ans. No, I did not.

Ques. 21. Did you know all the inhabitants of St. Louis since 1795 and before 1803, who lived in the village?

Ans. Yes; most part.

Quest. 22. Did you ever know or hear of a Louis Lacroix living in St. Louis between said years?

Ans. No, I do not.]

Ques. 23. Do you know what occupation Joseph Lacroix pursued?

Ans. He was a farmer and lime burner.

Cross-examination.

By the defendant's attorney:

Ques. 1. How do you know that Joseph Lacroix cultivated a field lot in the Grand Prairie before the change of government?

Ans. I saw him cultivate, and also bring his crop of corn, hay and potatoes to town. All the inhabitants cultivated there, and I saw Lacroix with the rest.

Ques. 2. When did the change of government take place?

Ans. In 1804.

Ques. 3. Could not Louis Lacroix have lived in St. Louis
68 between 1790 and 1803 without your knowing it?

Ans. No; he could not.

SANGUINET.

The defendant objected to the parts of said deposition marked and included within, [brackets] on the ground that the portions of said depositions objected to are incompetent evidence in this case; but the court overruled the defendant's objection, and allowed all of said deposition to be read; and the defendant, at the time, duly excepted.

Plaintiff read deposition of Elizabeth Ortez, as follows:

Testimony of Ortez.—June 20, 1859.

Elizabeth Ortez, of lawful age, being duly sworn, and examined on the part of the defendant, deposeth and saith:

I am ninety-six years old. I have lived in St. Louis ever since I was four years of age. I have known a man by the name of Louis Lacroix, a brother of St. Paul Lacroix. I knew him a great many years ago. I remember the time of the change of government. I knew Commander St. Ange. I became acquainted with Louis
69 Lacroix after I had known St. Ange. I have known Louis Lacroix after the change of government; I never knew him before the change of government. I have heard the relations of Louis Lacroix say he died somewhere in the State of Missouri. Louis Lacroix never was married, and therefore could have no children. St. Paul Lacroix is dead. I don't know whether he died before or

after Louis. St. Paul Lecroix left two children, a son and a daughter. The son's name was Michel; the daughter's name was Colastique. She married a Mr. Dugal. She married again Mr. Lafaivre. Michel died about a year ago, and Colastique is yet alive. I knew Joseph Lacroix, dit Bissonette. I knew him before the change of government. He was always known by the name of Lacroix Bissonette, before and after the change of government. He never was known by any other name than Lacroix Bissonette. He lived on Third street, opposite to the old theatre, and opposite to Mr. Montagne. I never knew whether Joseph Lacroix had any other name.

By Mr. McClure:

Question. Has anybody talked to you recently on the subject of Lacroix Bissonette changing his name?

70 (Objected to by Mr. Hill, as incompetent and irrelevant.)

Answer Nobody talked to me recently on that subject. I don't think that Joseph Lacroix Bissonette was a nickname. I think that Joseph was his real Christian name, and that he used that name in business transactions.

Cross-examined.

By plaintiff:

Q. by pl'ff. Where did Louis Lacroix live?

A. He lived at St. Charles, with his brother-in-law.

Q. About how long ago did you hear of his death?

A. It is many years ago; so long ago that I do not remember.

Q. Do you remember the war between England and the United States in 1812?

(Objected to by defendant.)

A. I do.

Q. How long after the beginning of that war did Louis Lacroix die?

A. I don't know; can't tell.

Q. How long after 1812 did you hear of his death?

A. I don't remember; it might be ten or fifteen years.

Q. Did Louis Lacroix always live in St. Charles; or was that always his home?

71 He lived there with his brother. He did not stay long at a time; he went up the Missouri on voyages.

Q. What was his business.

A. I don't know; never saw him but once at Mr. Robidoux's; he, Louis Lacroix, was leaving for up the Missouri.

Q. How often did you see Louis Lacroix?

A. I never saw him but once, and that was at Robidoux's.

Q. Was Mr. Robidoux a trader in the upper Missouri among the Indians?

A. No; St. Paul Lacroix did business with Mr. Robidoux, and his brother came down with him from St. Charles to see Mr. Robidoux in St. Louis.

Q. How old, or about, was Louis Lacroix at that time?

A. I don't know; he looked young; he might have been thirty-five or thirty-six years of age.

Q. Which was the older, St. Paul or Louis?

A. St. Paul was the older.

Q. Do you know where St. Paul and Louis Lacroix were born?

A. In Canada. I believe they were born in Canada. I believe they were Canadians.

Q. Was Joseph Lacroix born in St. Louis?

A. No; he was born in Canada.

72 Q. How long did you know Joseph Lacroix before the change of government?

A. I don't know; perhaps five, six, seven or eight years.

Q. Did you know Pierre Barribeau?

A. I have known Pierre Barribeau before the change of government in St. Louis.

Q. Were Joseph Lacroix and Pierre Barribeau neighbors and friends?

A. They lived together in the same house for two or three years, and were great friends; this was long before the change of government.

Q. Did Pierre Barribeau always live in St. Louis?

A. He always lived in St. Louis, and died in St. Louis.

Q. Do you remember Recorder Hunt, before whom the old French people used to prove up their titles in 1825?

(Objected to.)

A. I have known a Mr. Hunt. I don't know whether he was a United States officer or not.

Q. Were Joseph Lacroix and Pierre Barribeau alive about thirty years ago?

(Objected to.)

A. Barribeau died before Lacroix. He may have been

73 dead some twenty-five or thirty years.

Q. Do you remember of ever having gone to the Grand Prairie fields of St. Louis, within ten years before change of government?

A. I never was there, except before the change of government; before the change of government, I went there to gather strawberries.

Q. How old were you when you last went to the Grand Prairie, before the change of government?

A. The last time I went there I was between forty-nine and fifty years of age.

Re-examined by defendant.

Q. Were you acquainted with Louis Lacroix in St. Louis, before he went to live at St. Charles?

A. I never saw him but once, and that was when he came down from St. Charles with his brother.

her
ELIZABETH × ORTEZ.
mark.

Plaintiff then read the testimony of Joseph Labarge, as given at a former trial of this case, and preserved in a bill of exceptions, filed Feb'y 12, 1858, as follows:

74 *Testimony of Labarge.*

Joseph Labarge, witness sworn on the part of the plaintiff, stated as follows:

I am 72 years old 4th of July next. I have lived in St. Louis all the time. I knew Joseph Lacroix; he lived on the top of the hill in St. Louis; he had a tract in the grand Prairie, which went by the name of the Lacroix tract; it adjoined Barribeau on one side; it is forty-eight years since I first knew him. I saw him cut hay off of his lot after the change of government. I don't know how long he kept it; he died some time ago. I don't know when he died; it is not very long ago. I knew Barribeau; he had a piece of land in the Grand Prairie. I saw him mowing hay on his lot adjoining where Lacroix cut hay. I never knew any man by the name of Louis Lacroix; Joseph Lacroix and Barribeau lived in St. Louis in 1825. I don't know anything about lands in the Grand Prairie before the change of government.

Cross-examined by defendant.

I knew Joseph Lacroix owned a lot in the Grand Prairie, because I was often there. I saw Joseph Lacroix cutting hay in the Grand Prairie. I have seen him mowing there with old Barribeau. I never saw him cultivate any land in the Grand Prairie; the
75 prairie was vacant then, and it was a common thing at the time I speak of for anybody who choose to go out in the Grand Prairie to cut hay. [I always heard that Joseph Lacroix owned the land next to Barribeau. I never knew that Joseph Lacroix owned a lot in the Grand Prairie, only from seeing him cut hay there, and from what people said;] it was thirty-six or thirty-seven years ago, that I saw Joseph Lacroix cut grass there; the place where I saw him cut hay was near the big pond on the other side; the big pond was between the Prairie House and Cabena's farm, on the river Des Peres; the people in those days cut grass anywhere they could. I can't tell how far it was from the St. Charles road that Lacroix cut grass. I didn't measure it, and have no idea of the distance. I don't remember of any person cutting grass on Lacroix's tract. I saw persons cutting near his lot; they all cut grass at the same time; Lacroix's lot was 40 arpens long, I don't know the width; it runs west 40 arpens. I don't know the boundaries of the Grand Prairie. I knew Vasquez. I don't know if he had a lot there. I knew Laroche; understood he had land, but did not know where it was. I did not know Pavent. I always saw Joseph Lacroix and Pierre Barribeau mowing together on the Grand Prairie on their lots;
76 sometimes there were 50 or 60 others in the prairie mowing.

The defendant objected to the reading of so much of the said testimony as is marked and included within [brackets,] which the court excluded.

Plaintiff offered deposition of Marie Guibor, as follows:

Testimony of Marie Guibor.

Madame Marie Guibor, of lawful age, being hereby sworn, deposeth and saith as follows:

I am sixty-two years of age. I am the daughter of Joseph Lacroix; my parents had six children in all, to wit: Marie Louise, who married John Eymer; Therese, who married Joseph Montaigne; Julie, who married Savany Ruelle; Francis Lacroix, Bazil Lacroix, and myself completing the number. I was married to Auguste Guibor; Bazil died without children, the year of the first cholera, I believe in 1832 or 33; he was never married; Francois died some six or seven years ago in Illinois. I have frequently seen Pierre Barribeau, and, personally, I had a slight acquaintance with him; we lived in adjoining streets after I was married; my father lived near the corner of what are now Olive and Third streets. [I heard it said formerly
77 that Pierre Barribeau owned a lot or tract somewhere in the vicinity of my father's; that is in the "Grand Marais" prairie. I mean the prairie south of the Prairie House. I heard it said that Mr. Barribeau and my father once went together to the recorder's to prove something relative to the title of their respective tracts. I can't remember who told me this, nor what time it transpired, nor what the question at issue was. I do not know of this visit on my own knowledge. I frequently heard my father speak of his land in the "Grand Marais" prairie; he often would go out to haul wood from it; he spoke of this tract as habitually as belonging to him. I cannot say how old I was when I first heard my father speak of this land; it did not leave an impression on me.

My father lived several years after he had stopped his hauling wood; and I recollect of his speaking of this land before he had stopped hauling.] I believe that it will be twenty-six years this month since my father died; he died here in St. Louis. I was going on seventeen years when I was married to Guibor. I never knew Louis Lacroix; there was a brother of my father, I remember, who came here, but he stayed only a very short time, and returned I believe to Canada. I never heard of Louis Lacroix, until some time last winter, when somebody came to my house and questioned
78 me about Louis Lacroix. I have always lived in St. Louis; my mother also always lived here. I was a young child at the time of my uncle's visit, and cannot remember his first name.

Cross-examined by defendant.

I do not recollect in what year I was born, but I know from my baptismal register that I was sixty-two years of age the eighth of

last February. [I do not recollect when it was that I heard my father speak of owning his prairie land. I do not know of my own knowledge, that my father owned lands in the "Grand Marais" prairie, but my father told me so. I cannot tell when he told me so.] I knew a persen named St. Paul Lacroix, who lived in St. Charles; many went to the "Grand Marais" prairie to haul wood; and many others to the Cote Brilliante, &c.

Re-examined.

[When my father started to haul wood he was not in the habit of telling me where he went for his wood, nor would I ask him; my grandmother resided in the city; at first my mother lived with my grandmother, I being with them; afterwards, my mother started housekeeping on her own account. I remained with my grandmother, who raised me. I remained with her until her death.]

her
MARIE × GUIBOR.
mark.

Witness to signature—
THEOPHILE PAPIN.

79 Sworn and subscribed before me.

Defendant objected to the reading of the parts of said deposition included within [brackets] on the ground that said portions so objected to are not competent evidence in this case. But the court overruled defendant's objection, and allowed said parts to be read. And the defendant at the time duly excepted.

Plaintiff offered in testimony the evidence of August Guibor, given at a former trial, and contained in bill of exceptions filed in this case on 12th February, 1858, as follows:

Testimony of Aug. Guibord.

August Guibor sworn, states:

I am seventy-two years old. I have lived in St. Louis fifty-two years. I knew Joseph Lacroix between forty-four and forty-seven years ago. He lived on the corner of Third and Olive streets. He lived there a long time; I don't know how long. He died there about twenty-six years ago. Joseph Lacroix told me he owned a lot in the St. Louis Grand Prairie, adjoining Barribeau; Lacroix sent me out to this land once. I made a mistake and got on to Barribeau's land. I asked Barribeau where Lacroix's land was; he pointed south. I was out there yesterday. It is changed so
80 much, I don't know where Lacroix's land is. It is north of the plank road, about three miles from the city. It was north of the Prairie House. It was south of the old St. Charles road; I mean the land is south of the Prairie House. The Prairie House is north of the old St. Charles road. Joseph Lacroix left seven children: 1st, Francois Lacroix; 2d, Joseph Lacroix; 3d, Basil Lacroix; all

dead; Madame St. Vrain, Madame Montaigne, Madame Gentel, and Madame Guibhord, my wife, are now alive. Joseph Lacroix, jr., died many years ago; he left no children; Basil left no children, and is dead. I think the three above named were dead when Joseph Lacroix died. Joseph Lacroix told me the business of his land was settled. I don't know how it was settled. He told me he had proven up his claim before the U. S. recorder of land titles. He told me that he and Pierre Barribeau were neighbors, and Barribeau had proved up his claim for him, and they had served as witnesses for each other. He told me this about forty years ago; I think about fifteen years before his death. I travelled about ten
81 years of the time I lived in St. Louis. I never knew a man by the name of Louis Lacroix in St. Louis; never heard of one there. Knew a few people here then, and we all knew one another. I married here about forty-six years ago. Had there been a man here of that name I should have known it.

Lacroix gave me permission to cut hay on his land in the "Grand Prairie." I went there to cut hay, and by mistake got on to Barribeau's land. Barribeau stopped me, and showed me Lacroix's land. (All this testimony was objected to by defendant on the ground that it was hearsay testimony, &c., &c., coming from the party through whom title is claimed. The court admitted the testimony, declaring it not to be admitted for the purpose of establishing title, or any claim of title, but only as evidence upon the question of location and boundaries, and of identity; to which defendant excepted.)

Cross-examined by defendant.

I was twenty years old when I came to St. Louis; I am now seventy-two years old. I lived in St. Louis ten months before I left it; I was then absent from it. I was in the habit of going away, sometimes a few months, sometimes one year, and so on. I was
82 never absent more than one year at a time. I never knew Joseph Lacroix to cultivate any land in the Grand Prairie. I never heard him say that he ever cultivated any land in the Grand Prairie. The land that Joseph Lacroix told me he claimed must be near the Olive st. plank road; perhaps one or two arpens north of the Olive st. plank road, or in that neighborhood. I never saw Joseph Lacroix in the Grand Prairie. My wife is sick and cannot come to court; she is not able to go out.

William H. Cozzens, called by plaintiff, testified as follows:

Testimony of Wm. H. Cozzens.

I am surveyor and civil engineer, and have been for thirty years. Was born in St. Louis. I know the Lacroix tract in the Grand Prairie; its south boundary is the centre of Olive st., or road. It is bounded on the north by the Barribeau tract, and south by Laroche. I know the twelve arpens on the east end of it, now in suit. I surveyed this tract for the surveyor general in 1845 to 1851. I made

a survey of all the Grand Prairie common-field lots at the time I speak of. When I surveyed this tract there was a small
83 brick house on the east end of it, occupied by a German, who told me he was a tenant of Judge Townsend's. Judge Townsend and many others were out there when I made the surveys. I gave public notice to parties to appear at the survey. Townsend had the German driving stakes and marking his lines. Townsend had other tenants on the land. I began my surveys of the Grand Prairie common-field lots in 1845, and finished in 1851. I saw Townsend out there in 1845 or 1846; it was during the first week of my surveying that I saw Townsend there. He had a number of witnesses there. A deed from Cofield to Townsend, hereinafter set out, was shown witness, and he said: The description in this deed embraces the east end of the Lacroix tract, the twelve arpens now in suit, the east end of what is known as U. S. survey No. 1664. There was a fence arouud the house, and some land under cultivation. I saw persons occupying there as early as 1841. I knew Cofield; he claimed the Lacroix tract. The persons occupying remained there a long time after I had finished my surveys. The land has always been occupied and cultivated for some years.
84 I located the Olive st. road on the south side of this tract. M. L. Gray acted as attorney-in-fact for Townsend. I think Gray was present when I pointed out the lines, but am not sure. The parties occupying there from 1848 to 1851, I understood, were Townsend's tenants. I made a survey of the same premises for George Marshal. I do not know when defendant went into possession of the land in controversy, but I made my surveys for government in 1851, or 1852. I knew Joseph Lacroix when I was a boy. Madame Montaigne and Madame Ruelle. I did not know Joseph Lacroix's other children. The land in controversy, after it was enclosed, would rent for from $10 to $20 per arpent per annum. It would not rent for that before it was fenced. I saw defendant putting up his fence in 1851 or 1852, which, I think, enclosed all the ground that had been before occupied by different tenants. The fences had from time to time been extended, and finally they were extended down to the Olive st. road. I made all the surveys in Grand Prairie, and there is no other survey in the name of
85 Lacroix. There is no other survey for Pierre Barribeau but survey No. 1663, and there is no other survey for Louis Lacroix than survey No. 1664.

On cross-examination, witness said:

The fence that enclosed the house and cultivation of the German I saw there was a brush fence. When I first knew the land it was covered with brush and briars. The prairie was beyond that. I surveyed the same tract for George Marshall in 1848, 1849 or 1850. I pointed out to him the south boundary of the Barribeau tract.

Testimony of Mosberger.

Frederick Mosberger was recalled by plaintiff, and testified, that upon an examination of all the confirmations in the Grand Prairie,

there was no other to Louis or Joseph Lacroix but the one adjoining Barribeau.

Defendant objected to this evidence as being incompetent, but the court admitted it, and defendant duly excepted.

Plaintiff then read the testimony of the following persons as evidence, which testimony is in the words and figures following, to wit:

J. G. Lindell's Testimony.

Jesse G. Lindell sworn: I have lived in St. Louis since 1813. I was generally acquainted with the people. I knew Joseph Lacroix.
He lived about the corner of Third and Olive sts. I knew a
86 Lacroix who lived in Cahokia, an Indian trader. I don't know his first name. He was a young man. When the town began to improve, I lost sight of the French population. I don't know Joseph Lacroix's age; he was an elderly man in 1825.

Peter D. Barada's testimony.

Peter D. Barada sworn: I am 58 years old. I lived at Carondolet. I knew Joseph Lacroix; he lived near the old theatre. He was a lime burner. I knew Michel Lacroix; he lived at Cahokia. I knew no other Lacroixs.

Testimony of Ferguson.

Plaintiff then called Peter Ferguson, who testified that he knew Michel Lacroix, who married Miss Hay. He was about 35 years old when witness knew him, in 1818; that said Lacroix (he married Miss Hay of Belleville) was engaged as a trader; he died about the year 1822. Witness has lived in St. Louis 40 years, and knew Joseph Lacroix, who was a lime burner, and had kilns near the half moon in the upper part of the village. He lived just north of the old cross †. Witness knew him in 1816 or 1817. He was then past middle age.

On cross-examination, witness said:

87 The Lacroix he has spoken of was oftentimes called Lacroix Bissonette, but he was known as Joseph Lacroix. Witness said, on examination in probate's office, he found letters of administration were granted on his estate in May, 1821.

Testimony of D. B. Hill.

D. B. Hill, for plaintiff, testified that he had lived in St. Louis forty-four years; that he knew Joseph Lecroix, who was a lime-burner, and lived west of Third st., near Olive st. Witness knew Michel Lacroix that married Miss Hay; witness did not know whether he was alive in 1825 or not, but thinks he was; witness was well acquainted with old French inhabitants in St. Louis.

Testimony of John Simonds.

John Simonds, for plaintiff, testified; that he had lived in St. Louis over forty years; that he knew Joseph Lacroix in 1818 or 1819. Witness said he never knew any other Lacroix in St. Louis; witness was deputy constable for several years and afterwards deputy sheriff; witness collected taxes from Joseph Lacroix and knew almost everybody. Michel Lacroix died about 1822 or 1823. Joseph was about 44 years of age when witness knew him.

Testimony of Sul'n Blood.

Sullivan Blood, for plaintiff, testified that he had lived in St. Louis 42 years; that he knew Joseph Lacroix, who lived on north
88 side of Olive st., and he was from 40 to 50 years of age when he first knew him. Witness knew his family; Montaigne married one of his daughters and Guiber married an other; witness knew of no other Lacroix in St. Louis, except the one who married Miss Hay; witness knew most of the inhabitants at that time in St. Louis; witness did not know when Joseph Lacroix died, but thought it was in 1832.

Testimony of J. P. Pourcelle.

J. P. Pourcelle, as witness for the plaintiff, testified that he was 75 years old; that he knew Joseph Lacroix and had known him from the time witness was 10 years old; witness knew no other Lacroix here in St. Louis at that time; witness knew a man by the name of Michel Lacroix, who lived at Cahokia, Illinois, who married Miss Hay; witness never knew any other Lacroix but these two up to 1825.

Testimony of Jno. B. Hortiz.

John B. Hortiz, for plaintiff, testified that he is 67 years old, and had lived all the time in St. Louis, and knew, in early times, all the people here. Witness said he knew Lacroix Bissonette; he was advanced in years when witness was a boy; witness knew several persons by the name of Lacroix in St. Louis, and knew Michel
89 Lacroix of Cahokia, Ill., and also his brother; witness knew Paul Lacroix, of St. Charles, but never knew Louis Lacroix.

On cross-examination witness said that the Lacroix he spoke of in St. Louis was called Lacroix Bissonette; that it was only of late times that he (witness) had heard him called Joseph Lacroix; witness knew of no other person by name of Lacroix at Portage Dessoux.

Which testimony appears in the transcript of the record in this case, filed in the Supreme Court March 3, 1860.

Plaintiff then read confirmation certificate No. 145, to Louis Lacroix, as follows:

Confirmation certificate to Louis Lacroix.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 8th September, 1857.

Confirmation certificate No. 145:

It is hereby certified that under the first section of the act of Congress approved on the 13th day of June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," and the two acts of Congress of the 26th of May, 1824, and 27th January, 1831, supplemental, or having thereto, Louis Lacroix was confirmed in his claim to a tract of land of one by forty arpens, situated in the Grand Prairie common field of St. Louis.

It is further certified that the same has been lawfully surveyed
90 in conformity with said confirmation, in the said common field, being in township 45 north of the base line, range 7 east of the 5th principal meridian, in the State of Missouri, as appears from the accompanying plat and transcript of survey numbered 1664, authenticated and returned on the 17th July, 1857, to this office by John Loughborough, surveyor general for the district of Illinois and Missouri, to wit: beginning at A on the plat, the northeast corner of the survey, and running thence south 28 degrees 45 minutes west, with the eastern line of the survey 2 chains 92 2–3 links to its southeast corner; thence north 61 degrees west, with the southern line of the survey, 116 chains 91 links to its southwest corner; thence north 28 degrees 45 minutes east with the western line of the survey, 2 chains 91 2–3 links to its northwest corner, and thence south 61 degrees east, with the northern line of the survey 116 chains 98 links, to the beginning corner, all in English measure; said survey No. 1664 contains 34 11–100 acres.

It is further certified that the whole area of said survey No. 1664 is interfered with by surveys previously executed, viz., to the amount of 19 39–100 acres in section 16 reserved for the schools and in the following surveys of location under the act of Congress of the
91 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory who sufferred by earthquakes," to wit, to the amount of 0 86–100 of an acre in survey No. 2500, under certificate No. 161, issued to Joseph Hunot or legal representatives, for 480 acres; of 0 70–100 of an acre in survey No. 2692, under certificate No. 19, issued to Joseph Genereux or legal representatives, for 160 acres; and of 13 16–100 acres in survey No. 2712 under certificate No. 348, issued to James Conway, or legal representatives, for 200 arpens.

In testimony whereof I have hereunto set my hand on the day and in the year year above written.

ADOLPH RENARD,
U. S. Recorder of Land Title in the State of Missouri.

Testimony of A. S. Linsay.

A. S. Linsay, clerk of Probate Court, called by plaintiff, testified as follows:

I have examined, but do not find that letters of administration were ever granted upon the estate of Joseph Lacroix; administration was had on the estate of Michel Lacroix.

Plaintiff then read in evidence the following deeds:

Francis Lacroix to Cofield, Dec. 13, 1848.

Ruelle and wife and Montaigne and wife to Cofield, Dec. 13, 1848.

92 Eimer and wife to Guibor, Dec. 21, 1848.

Guibor and wife to Aug. Guibor, Dec. 21, 1848.

Aug. Guibor and wife to Cofield, Dec. 30, 1848.

Cofield to Townsend, Mch. 20, 1849.

Townsend to Williams, Feb'y 21, 1855.

Power of attorney from Williams to Gray, Mch. 20, 1849.

Deed from Francis Lacroix and wife to Cofield.

This deed, made and entered into this eighteenth day of December, eighteen hundred and forty-eight, by and between Francis Lacroix and Omaran, his wife, of the county of St. Clair, Ills., of the first part, and Joseph B. Cofield, of the county of St. Louis, Missouri, of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of one hundred dollars to them in hand paid by the said party of the second part, receipt whereof is hereby confessed and acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell, convey and confirm unto the said party of the second part, his heirs and assigns forever, a certain common field lot situated in the southern part of the Grand Prairie, near the city of St. Louis, being one arpent in front and width, more or less, by forty arpents long;

93 and that the same, the possession and cultivation of which was proved before Theodore Hunt, recorder of land titles, on the third day of March, 1825, in the name of Louis Lacroix, meaning Joseph Lacroix, and described in said proof as bounded north by a lot of Pierre Barribeau, and on the south by a lot of Paul La Grandeur, alias Guitard, and which, as recently surveyed by William H. Cozzens, is bounded on the north by the lot of Pierre Barribean and on the south by that of Louis Laroche.

To have and to hold the same, with all the rights, privileges and appurtenances thereunto belonging, or in any wise appertaining unto him, the said party of the second part, his heirs and assigns forever. The said Francois Lacroix, party of the first part, hereby covenanting that he, his heirs, executors and administrators, will warrant and defend the title to the said premises, and every part thereof to him, the said party of the second part, his heirs and assigns, against the lawful claim or claims of all and every person or persons whatsoever, claiming or to claim the same, or any part thereof, by, through or under him, but against none other.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first herein written.

94 [SEAL.] FRANCIS LACROIX.

Done in presence of—

The words "and Omaran, his wife," interlined between the 2d and 3d lines before execution.

STATE OF MISSOURI, *County of St. Louis, ss*:

Be it remembered that on the 18th day of December, 1848, before me, the undersigned, clerk of the St. Louis County Court, came Francis Lacroix, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and he acknowledge the same to be his act and deed for the purposes therein mentioned.

In testimony whereof I hereto set my hand and affix the seal of the said court, at office in the city of St. Louis, the date last aforesaid.

Filed and recorded Dec. 21, 1848.

[SEAL.] LEWIS F. LACY, *Cl'k.*

STATE OF MISSOURI, *County of St. Louis, ss*:

I, the undersigned, recorder for said county, certify the
95 foregoing to be a true and complete copy of a deed from F. Lacroix and J. B. Cofield, and of the certificate of acknowledgement and of the date of filing and recording thereof, as fully as the same remains of record in my office, in book X 4, page 434.

Witness my hand and official seal this 14th day of may, 1857.

[SEAL.] C. KEEMLE, *Recorder*,
Pr. BENJ. B. HICKS, *Dept.*

Deed of Montaigne and wife and Ruelle and wife to Cofield.

This deed, made and entered into this thirteenth day of December, eighteen hundred and forty-eight, by and between Savarosne Ruelle and Julie his wife, and Joseph Montaigne and Therese his wife, of St. Louis county, State of Missouri, parties of the first part, Joseph B. Cofield, of said St. Louis county, party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one hundred dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, grant, bargain, sell and convey and confirm unto the said party of the second part, his heirs and assigns, a certain common field lot, situated in the southern, part of the Grand Prairie, near the city of St. Louis, being one arpent more or less in width, by forty arpens long, and the same, the possession and cultivation of which was proved before Theodore Hunt, recorder
96 of land titles, on the 3d of March, A. D. 1825, in the name of Louis Lacroix, meaning Joseph Lacroix, and described in said proof

as bounded on the north by a lot of Pierre Barribeau, and on the south by a lot of Paul La Grandeur, alias Guitard, and which, as recently surveyed by William H. Cozzens, is bounded on the north by the lot of Pierre Barribeau, and on the south by that of Louis Laroche, to have and to hold the same, together with the rights and immunities, privileges and appurtenances to the same belonging, unto the said party of the second part, and to his heirs and assigns forever. The said parties of the first part hereby covenanting that they, their executors and administrators shall and will warrant and defend the title to the premises to the said party of the second part, and to his heirs and assigns forever, against the lawful claim of all persons claiming, or to claim the same, or any part thereof, by, through, or under them, but against none others.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

97 [SEAL.] JOSEPHUS his + mark. MONTAGNE,

[SEAL.] THERESE her + mark. MONTAGNE,

Done in presence of—

STATE OF MISSOURI, *County of St. Louis, ss*:

Be it remembered that on this 14th day of December, A. D. 1848, before the undersigned clerk of the St. Louis County Court, came Joseph Montague and Therese Montagne, his wife, who are personally known to me to be the same persons whose names are signed to the within instrument in writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned. She, the said Therese, being first made acquainted with the contents of said conveyance, acknowledged on examination apart from her husband, that she executed the same fully and without compulsion or undue influence of her said husband.

Given under my hand and seal of said court, at office in the city of St. Louis, the date last aforesaid.

[SEAL.] LEWIS T. LACY, *Clk.*

Filed and recorded December 21st, 1848.

STATE OF MISSOURI, *County of St. Louis, ss*:

98 I, the undersigned recorder for said county, certify the foregoing to be a true and complete copy of a deed from J. Montagne *et al.* to Joseph B. Cofield, and of the certificate of acknowledgement, and of the date of filing and recording thereof, as fully as the same remains of record in my office, in book X 4, p. 434.

Witness my hand and official seal, this 14th day of May, 1857.

[SEAL.] C. KEEMLE, *Recorder*,
Per BENJ. B. HICKS, *Dept.*

Deed.—S. Ruella and wife to Cofield.

This deed, made and entered into this thirteenth day of December, eighteen hundred forty-eight, by and between Savarre Ruelli, and Julie his wife, and Joseph Montagne, and Therese his wife, of St. Louis county, State of Missouri, parties of the first part, and Joseph B. Cofield, of said St. Louis county, party of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of one hundred dollars to them paid by said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever, a
99 certain common field lot, situated in the southern part of the Grand Prairie, near the city of St. Louis, being one arpent, more or less, in width, by forty arpens along, and the same the possession and cultivation of which was proved before Theodore Hunt, recorder of land titles, on the 3d of March, A. D. 1825, in the name of Louis Lacroix, meaning Joseph Lacroix, and described in said proof as bounded on the north by a lot of Pierre Barribeau, and on the south by a lot of Paul La Grandeur, alias Guitard, and which, as recently surveyed by William H. Gozzens, is bounded on the north by the lot of Pierre Barribeau, and on the south by that of Louis Laroche, to have and to hold the same, together with the rights, immunities, privileges and appurtenances to the same belonging, unto the said party of the second part, and to his heirs and assigns forever. The said parties of the first part, hereby covenanting that they, their heirs, executors and administrators shall and will warrant and defend the title to the premises, to the said party of the second part, and to his heirs and assigns forever against the lawful claims of all persons claiming or to claim the same, or any part thereof, by, through, or under them, but against none other.

100 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[SEAL.] JOSEPH + MONTAGNE, his mark.

[SEAL.] THERESE + MONTAGNE, her mark.

SAVARRE + RUELLI, his mark.

[SEAL.] JULIE + RUELLI, her mark.

Done in presence of—
J. THORNBURG.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this 14th day of December, 1848, before me, the undersigned clerk of the St. Louis County Court, come Joseph Montagne, and Therese Montagne his wife, who are personally known to me to be the same persons whose names are signed to the within instrument of writing as parties thereto, and they acknowledged the same to be their act and deed, for the purposes therein mentioned. She, the said Therese, being first made acquainted with the contents of said conveyance, and acknowledged, on an examination apart from her husband, that she executed the same fully and without compulsion, or undue influence of her said husband.

101 Given under my hand and the seal of the said court, at office in St. Louis, the date last aforesaid.

[SEAL.] LEWIS F. TRACY, *Clerk.*

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this sixth day of January, A. D. 1849, before the undersigned clerk of the St. Louis County Court, came Savarre Ruelli, and Julie Ruelli his wife, who are personally known to me to be the same persons whose names are signed to the preceding instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned. She, the said Julie, being first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband that she executed the same fully and without compulsion or undue influence of her said husband.

In testimony whereof I hereto set my hand, affix the seal of said court, at office in St. Louis, the date last aforesaid.

[SEAL.] LEWIS F. TRACY, *Clk.*

Filed and recorded January 6, 1849.

102 STATE OF MISSOURI, *County of St. Louis, ss* :

I, the undersigned recorder for said county, certify that the foregoing is a true and complete copy of an instrument in writing from S. Ruelli and J. Montagne to J. B. Cofield, and also of the two certificates of acknowledgement, and the date of filing and recording thereof, as fully as the same remains of record in my office, in book Y 4, p. 201.

Witness my hand and official seal, this 14th day of May, 1857.

[SEAL.] C. KEEMLE, *Recorder*,
Per BENJ. B. HICKS, *Dept.*

Deed of Eymer and wife to A. Guibor.

This deed, made and entered into this twenty-first day of December, eighteen hundred and forty-eight, by and between Jean Eymer, and Mary L. his wife, of the county of St. Louis, and State of Missouri, of the first part, and Augustus Guibor, of the county and State

aforesaid, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one hundred dollars to them in hand paid by the said party of the second part,
103 the receipt whereof is hereby confessed and acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell, convey and confirm, unto the said party of the second part, his heirs and assigns for ever, a certain common field lot of ground situated in the southern part of the Grand Prairie, near the city of St. Louis, being one arpent, more or less, in width, and forty arpents long, and the same the possession and cultivation of which was proved before Theodore Hunt, recorder of land titles, on the third of March, A. D. 1825, in the name of Louis Lacroix, meaning Joseph Lacroix, and described in said proof as bounded on the north by Pierre Barribeau, and on the south by a lot of Paul La Grandeur, alias Guitard; and which, as recently surveyed by William H. Cozzens, is bounded on the north by lot of Pierre Barribeau, and on the south by that of Louis Laroche.

To have and to hold the same, with all the rights, privileges and appurtenances thereunto belonging, or in any wise appertaining unto him, the said party of the second part, his heirs and assigns forever.

The said Jean Ema, and Mary L., his wife, parties of the
104 first part, hereby covenanting that their heirs, executors and administrators will warrant and defend the titie to the premises and every part thereof, to him, the said party of the second part, his heirs and assigns, against the lawful claim or claims of all and every person or persons whatsoever, claiming or to claim the same or any part thereof, by, through or under them, but against none other.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

[SEAL.] JEAN EYMA.
[SEAL.] MARIE L. EMA.

Done in presence of—

STATE OF MISSOURI, *County of St. Louis, ss*:

Be it remembered that on this first day of December, eighteen hundred and forty-eight, before me, the undersigned, clerk of the County Court for the county aforesaid, came Jean Eyma, and Marie L. Eyma, his wife, who are proven to me by Joseph B. Cofield and William Fine, two credible witnesses examined by me on oath, to be the same persons whose names are subscribed to the fore-
105 going instrument of writing as parties thereto; and they acknowledged the same to be their act and deed for the purposes therein mentioned. She, the said Marie, having been by me first made acquainted with the contents thereof, acknowledged on an examination separate and apart from her husband, that she executed the same fully, voluntarily and without compulsion or undue influence of her said husband.

In testimony whereof I hereto set my hand and affix the seal of said court, at office in St. Louis, the date last aforesaid.

[SEAL.] LEWIS F. LACY, *Cl'k.*

Filed and recorded M'ch 23, 1849.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify the foregoing to be a true and complete copy of an instrument of writing from J. Eyma to A. Grebor, and also of the certificate of acknowledgement and of the date of filing and recording thereof, as fully the same remains of record in my office, in book Y, 4, 411.

Witness my hand and seal this 14th day of March, 1857.

[SEAL.] C. KEEMLE, *Recorder,*
Per BENJ. B. HICKS, *Dept.*

106 *Deed of A. Guibor and wife to A. Guibor.*

This deed, made and entered into this twenty-first day of December, eighteen hundred and forty-eight, by and between Auguste Guibor and Mary C., his wife, of the county of St. Louis, and State of Missouri, of the first part, and Auguste Guibor, of the county and State aforesaid, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one hundred dollars to them in hand paid by the said party of the second part, receipt whereof is hereby confessed and acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell, convey and confirm unto the said party of the second part, his heirs and assigns forever, a certain common field lot of ground, situated in the southern part of the Grand Prairie, near the city of St. Louis, being one arpent, more or less, in width, and forty arpents long, and the same, the possession and cultivation of which was proved before Theodore Hunt, recorder of land titles, on the third day of March, A. D. 1825, in the name of Louis Lacroix, meaning Joseph Lacroix, and described in said proof as bounded on the north
107 by a lot of Pierre Barribeau, and on the south by a lot of Paul La Grandeur, alias Guitard, and which, as recently surveyed by Wm. H. Cozzens, is bounded on the north by the lot of Pierre Barribeau, and on the south by that of Louis Larache.

To have and to hold the same, with all the rights and privileges and appurtenances thereunto belonging or in any wise appertaining, unto him, the said party of the second part, his heirs and assigns forever.

The said Auguste Guibor and Mary C., his wife, parties of the first part, hereby covenanting that their executors and administrators will warrant and defend the title to the said premises, and every part thereof, to him, the said party of the second part, his heirs and assigns, against the claim or claims of all and every person or persons

whatsoever claiming or to claim the same, or any part thereof, by, through or under them, but against none other.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

[SEAL.] AUGUSTE his × mark. GUIBOR.

[SEAL.] MARIE C. GUIBOR.

Done in presence of —
J. THORNBURGH.

STATE OF MISSOURI, *County of St. Louis, ss*:

108 Be it remembered that on this twenty-first day of December, eighteen hundred and forty-eight, before me, the undersigned, clerk of the St. Louis County Court, came Auguste Guibor and Marie C. Guibor, his wife, who were proven to me by the testimony of Joseph B. Cofield and William Fine, two credible witnesses by me examined under oath, to be the same persons whose names are signed to the preceding instrument of writing, as parties thereto, and they acknowledged the same to be their act and deed, for the purposes therein mentioned; she, the said Mary C., being first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same freely and without compulsion or undue influence of her said husband.

In witness whereof I hereto set my hand and affix the seal of said court, at office in St. Louis, the date last aforesaid.

[SEAL.] LEWIS F. LACY, *Clerk.*

STATE OF MISSOURI, *County of St. Louis, ss*:

I, the undersigned, recorder for said county, certify that the
109 foregoing is a true and complete copy of a deed from A. Guibor to A. Guibor; and also of the certificate of acknowledgement thereof, and the date of filing and recording the same, as the same remains of record in my office, in Book Y 4, p. 412.

Witness my hand and official seal the 14th May, 1857.

[SEAL.] C KEEMLE, *Recorder*,
Per BENJ. B. HICKS, *Dept.*

Deed of A. Guibor to Cofield.

This deed, made and entered into this thirtieth day of December, eighteen hundred and forty-eight, by and between Augustus Guibor and Editha P., his wife, of the city and county of St. Louis, State of Missouri, parties of the first part, and Joseph B. Cofield, of the same city, county and State, party of the second part, witnesseth: That the said parties of the first , in consideration of the sum of five hundred dollars to him paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part, two

undivided fifth parts of a certain common field lot, situated in
110 the southern part of the Grand Prairie, in the city of St. Louis, being one arpent, more or less, French measure, in width, by forty arpents, same measure, in length, and the same lot, the possession and cultivation of which was proved before Theodore Hunt, recorder of land titles, on the 3d day of March, A. D. 1825, in the name of Louis Lacroix, meaning Joseph Lacroix, described in said proof as bounded on the north by a lot of Pierre Barribeau, and on the south by Paul LaGrandeur, alias Guitard, and, as recently surveyed by William H. Cozzens, is bounded north by Pierre Barribeau and south by Louis Laroche, the two-fifths hereby conveyed being the same which I acquired on the 21st day of December, A. D. 1848, from my father, Auguste Guibar, and my uncle John Ema.

To have and to hold the same, together with the rights, immunities, privileges and appurtenances to the same belonging, unto the said party of the second part, and to his heirs and assigns forever. The said Augustus Guibor hereby covenanting that he, his heirs, executors and administrators, shall and will warrant and defend the title to the premises to the said party of the second part, and
111 to his heirs and assigns forever, against the lawful claims of all persons claiming or to claim the same or any part thereof, by, through or under said parties of the first part, but against none others.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[SEAL.] AUGUSTUS GUIBOR.
[SEAL.] EDITHA P. GUIBOR.

Done in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this twenty-second day of January, eighteen and forty-nine, before me, the undersigned, a justice of the peace, within and for the county aforesaid, came Augustus Guibor, and Editha P. Guibor, his wife, who are both by me personally known to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned; she, the said Editha P., wife of the said Augustus Guibor, being by me first made acquainted with the contents thereof, acknowledged and declared, on examination apart from her husband, that she executed the said deed and relin-
112 quishes her dower in the real estate therein mentioned, freely, voluntarily, and without compulsion or undue influence of her said husband.

Taken and certified to by me on the day and year aforesaid.

JOHN BLACK,
Justice of the Peace.

Filed and recorded M'ch 23, 1849.

STATE OF MISSOURI, *County of St. Louis, ss;*

I, the undersigned recorder for said county, certify the foregoing to be a true and complete copy of an instrument in writing from A. Guibor to J. B. Cofield, and of the certificate of acknowledgement and of the date of filing and recording thereof, as fully as the same remains of record in my office, in book Y 4, p. 413.

Witness my hand and official seal this 14th May, 1857.

[SEAL.] C. KEEMLE, *Recorder*,
Per BENJ. B. HICKS, *Dept.*

Deed of Cofield to Townsend.

This deed, made this twentieth day of March, A. D. 1849, by and between Joseph B. Cofield, of the first part, and James B. Townsend, esq., of the second part, both of the city and county of St.
113 Louis and State of Missouri, witnesseth:

That the said party of the first part, for and in consideration of the sum of twelve hundred dollars to him in hand paid, receipt of which is hereby acknowledged, granted, bargained and sold, and does by these presents grant, bargain and sell unto him, the said party of the second part, the quantity of twelve arpents of ground in the form of a parallellogram, to be taken from the east end of a tract of one by forty arpents, situated in the southern part of the Grand Prairie, westwardly from the city of St. Louis, in township forty-five north, and range seven east of the fifth principal meridian, the said tract of forty arpents being the same the possession of which was proved before Theodore Hunt, recorder of land titles, on the 3d day of March, A. D. 1825, in the name of Louis Lacroix, described in said proof as bounded on the north by a lot of Pierre Barribeau, on the south by a lot of Paul La Grandeur, alias Guitard, and as recently surveyed by William H. Cozzens, is bounded on the north by Pierre Barribeau, and on the south by Louis Laroche; the tract of land being the same which the said party of the first part has recently purchased from the heirs of Joseph Lacroix, and the
114 twelve arpents hereby conveyed to said party of the second part, being to be taken from the east end of said tract, of the full width of the tract, and to be cut off by a line run parallel to the line bounding the east end of said tract: To have and to hold the said twelve arpens to him, the said party of the second part, and to his heirs and assigns forever; the said party of the first part covenanting that he, his heirs and executors, shall and will warrant and defend to him, the said party of the second part, his heirs and assigns, the title to the said twelve arpens hereby conveyed against the lawful claim or claims of all or any person or persons claiming or to claim the same, or any part thereof, by, through, or under him, but against none other.

In witness whereof the said parties of the first part has hereunto set his hand and seal this day and year first above written.

[SEAL.] JOSEPH B. COFIELD.

STATE OF MISSOURI, *County of St. Louis, ss*:

Be it rembered that on this twentieth day of March, eight hundred and forty-nine, before the undersigned, recorder for
115 said county, came Joseph B. Cofield, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in writing as party thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

Witness my hand and official seal the day and year aforesaid.

[SEAL.] S. D. BARLOW, *Recorder*.

Filed and recorded March 20, 1849.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned recorder in and for said county, do hereby certify that the foregoing is a true and complete copy of a deed from Joseph B. Cofield to James B. Townsend, as also of the certificate of acknowledgement, and of the date of filing and recording thereof, as fully as the same remains of record in my office, in book A 5, p. 202.

Witness my hand and official seal this fourteenth day of May, A. D. 1857.

[SEAL.] C. KEEMLE, *Recorder*,
Per BENJ. B. HICKS, *Dept*.

Power of attorney.—Townsend to Gray.

116 Know all men by these presents that I, James B. Townsend, esq., of the city and county of St. Louis, State of Missouri, have made, constituted and appointed, and do, by these presents, make, constitute and appoint Melvin G. Gray, esq., of the same city, county and State, my true and lawful attorney, for me and in my name, and to and for my use, to ask, demand, sue for, recover and receive all moneys, property of any kind, real and personal, dues, demands and claims whatsoever which I now have, or which may hereafter accrue to me; and upon and every such recovery or receipt full and sufficient acquittance and discharge to give; also, to compromise on such terms as he may think proper, and claim, due or demand which I now have, or which may hereafter accrue to me as aforesaid, upon or for any property, real or personal; also, to sell any property, real or personal, which I now own or which I may hereafter acquire, and upon any such sale any money or property coming to me to receive, and full acquittance therefor in my name to give; also, to lease, mortgage or encumber by note and deed of trust any property, real or personal, which I now own or claim, or which I may hereafter own or claim; and all such lease, mortgage,
117 notes, deed of trust, or other encumbrances in my name and as my act, to make, execute, sign, seal and deliver; and any money or property due and coming to me upon any such lease, mortgage, deed of trust or other encumbrances to receive, and full ac-

quittance and discharge therefor to give; also to appear before any officer having competent legal authority, and in my name and as my act to acknowledge any instrument of writing made and executed in conformity hereto, and by virtue hereof; also to appoint any attorney or attorneys under him with like power as is herein contained, and generally to have and exercise full power and authority in the premises aforesaid in as ample manner as if I were present and acting.

In witness whereof I have hereunto set my hand and affixed seal, at the city of St. Louis aforesaid, on the twentieth day of March, anno Domini eighteen hundred and forty-nine.

[SEAL.] JAMES B. TOWNSEND.

The words "lease," between the 28th and 29th lines, and "note and," between 28th and 30th of 1st page; and "lease" and "notes," between the 33d and 34th lines and same page, and "lease," between 2d and 3d lines of 2d page, interlined before execution.

118 STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that James B. Townsend, who is personally known to the undersigned justice of the peace for the county aforesaid, to be the person whose name is subscribed to the foregoing deed as party thereto, this day appeared before the undersigned at the county aforesaid, and acknowledged that he executed the same for the purposes therein mentioned.

Taken and certified 26th March, 1859.

MANN BUTLER.

Filed and recorded Nov. 12, 1849.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned recorder for said county of St. Louis, certify that the foregoing is a true copy of an instrument of writing executed by J. B. Townsend to M. L. Gray, and of the certificate of acknowledgment, as also of the date of filing and recording thereof, as fully as the same remains of record in my office, in book E No. 5, p. 423.

Witness my hand and official seal this the 25th day of November, 1857.

[SEAL.] C. KEEMLE, *Recorder.*
Per J. CONRAD, *D'y.*

119 *Deed of Townsend to H. W. Williams.*

This deed, made and entered into this twenty-first day of February, eighteen hundred and fifty-five, by and between James B. Townsend, of San Francisco, California, by Melvin L. Gray, his attorney-in-fact, and Adelaide G. Townsend, wife of the said James B. Townsend, of Bardstown, in the State of Kentucky, parties of the first part, and Henry W. Williams, of the county of St. Louis, party of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of four thousand eight hundred dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents remiss, release, and forever quit-claim unto the said party of the second part, the quantity of twelve arpens of ground, in the form of a parallelogram, to be taken from the east end of a tract of one by forty arpens, situated in the southern part of the Grand Prairie, westwardly from the city of St. Louis, in township forty-five north, and range seven east of the fifth principal meridian; the said tract of forty arpens being the same the possession of which was proven before Theodore Hunt, recorder of land titles, on the 3d day of March, A. D. 1825, in the name of Louis
120 Lacroix, meaning Joseph Lacroix, described in said proof as bounded on the north by a lot of Pierre Barribeau, on the south by a lot of Paul La Grandeur, alias Guitard; and, as recently surveyed by Wm. T. Cozzens, is bounded on the north by Pierre Barribeau, and on the south by Louis Laroche; the said tract being the same which the said party of the first part acquired of Joseph B. Cofield by deed, bearing date March 20th, 1849, recorded in the recorder's office of St. Louis county, in book A No. 5, p. 202 and 203; the power of attorney under which Melion L. Gray executed this deed being dated March 20th, 1859, recorded in book E No. 5, p. 423:

To have and to hold the same, together with all the rights, immunities, privileges and appurtenances to the same belonging, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[SEAL.] JAMES B. TOWNSEND,
By Melvin L. Gray, his Attorney-in-fact.

[SEAL] ADELAIDE G. TOWNSEND.

Executed in presence of—
—— ——.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this twenty-fourth day of February, A. D. eighteen hundred and fifty-five, before me, the undersigned clerk of the St. Louis County Court, came Melvin L. Gray, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as attorney-in-fact for James B. Townsend, a party thereto, and he acknowledged the same to be the act and deed of the said Townsend, done by and through him, said Gray, as attorney as aforesaid, for the purposes therein mentioned.

In witness whereof I hereto set my hand and affix the seal of said court the date last aforesaid.

[SEAL.] JOSIAH THORNBURGH, *Cl'k.*

STATE OF MISSOURI, *County of St. Louis, ss*:

I, the undersigned recorder for said county, certify that the foregoing deed was filed for record in my office, February 24th, 1855, and is truly recorded in book 161, p. 263.

Witness my hand and official seal the date aforesaid.

[SEAL.] C. KEEMLE, *Recorder.*

122 STATE OF KENTUCKY, *County of Nelson, ss*: I. J. D.

Be it remembered that Adelaide G. Townsend, wife of James B. Townsend, who is personally known to me, the undersigned clerk of the Nelson County Court, in the State of Kentucky, (which is a court of record,) to be the same person whose name is subscribed to the foregoing deed as a party thereto, appeared this 3d day of March, 1855, before me, in my office in said county, and acknowledged that she executed the said deed for the purposes therein expressed; and the said Adelaide G. Townsend, wife of the said James B. Townsend, having been by me first made acquainted with the contents of the said deed, and on an examination separate and apart from her said husband, acknowledged that she executed said deed and relinquished her dower in the real estate therein mentioned, freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Bardstown, in said county, the day and year first above written.

[SEAL.] J. DAVIONI ELLIOTT, *Cl'k.*

123 STATE OF MISSOURI, *County of St. Louis*:

I, the undersigned recorder in and for said county, certify that the foregoing instrument of writing was filed for record in my office, March 12th, 1855; and is truly recorded in book 158, p. 323.

Witness my hand and official seal the date aforesaid.

[SEAL.] C. KEEMLE, *Recorder.*

Extract from register of births, marriages and deaths.

Plaintiff then offered and read in extracts from register of the catholic cathedral in evidence, as follows:

Extract from the register of burials of the catholic church of St. Charles, Missouri:

"Le vingt-un Novembre, mil huit cent quartorze a ete inhume au cemeterie de cette eglise le corps de St. Paul Lecroix, mort, de hier l'interment; c'est in presence de plusieurs personnes.

"M. DUNAND, *Pretre.*"

STATE OF MISSOURI, *County of Charles, ss*:

Personally appeared before me, the undersigned, the Rev. P. J. Verhaegan, presiding priest of the catholic church, in the city of St. Charles, Missouri, who, being duly sworn, says: That by ordinance of the said church, a register is required to be kept of mar-

124 riages, births, baptisms and deaths; and that he has in charge the said register, and that the above is truly transcribed from the said church record or register.

P. J. VERHAEGEN,
Pastor of the Catholic Church, St. Charles, Mo.

Sworn to and subscribed before me, Henry A. Cunningham, a notary public within and for St. Charles county, on the 24th day of September, A. D. 1859.

In testimony whereof I have hereunto set my hand and official seal.

[SEAL.] HENRY A. CUNNINGHAM,
Notary Public for St. Charles Co., Mo.

Extracts of the registers of sepultures, marriages, and births of the St. Louis Cathedral.

1e. Mary Lecroix, 8 years old, died on the 25th of August, 1812; daughter of Joseph Lacroix and of Pilagie Bissonette, p. 83 of the volume 1781 and 1832.

2e. Helene Lacroix, 46 years old, died on the 11th of May, 1820, p. 112 volume 1781 and 1832.

3e. Joseph Lacroix, 72 years old, died on the 31st of November, 1831, page 76 of the volume 1781 and 1832.

125 4e. On the 2d of January, an infant of Francois Lacroix 2 years old, died on the year 1830, p. 64 volume, 1781 and 1832.

5e. Susanne Lecroix, daughter of Jean B. Lacroix and of Catherine Hanlenckon, born on the first February, 1780, page 1 of the volume 1779 and 1804.

6e. Eulalie Lacroix, born on the 10th October, 1794, daughter of Joseph Lacroix Helene Bissonette, page, 64 volume, 1779 and 1804.

7e. Charles Lacroix, died on the 23d of September, 1806, page 65, volume 1781 and 1832.

8e. Francois, son of Francois Lacroix, Amaranth Bordeaux, born on 24th October, 1831, p. 294, volume 1823.

9e. Julie Lacroix, daughter of Francois Lacroix and Amaranth Bourdeaux, born on the 5th of November, 1830, p. 224 volume, 1823.

10. Mary Catherine Lacroix, daughter of Joseph Lecroix and Helene Bissionette, born on the 8th February, p. 75 vol., 1804.

11. Mary Therese Lecroix, daughter of Joseph Lecroix and Helen Bissonette, born on the 14th of April, 1797, p. 84, vol. 1779.

12. Joseph Lacroix, son of Joseph Lacroix and of Helene Bissonette, born on the 12th April, 1801, p. 113, volume 1779.

126 13. Joseph Guibien, son of Joseph Lacroix and Helene Bissonette, born on the 12th May, 1803, page 129, volume 1779.

14. Mary Eulalie, daughter of Joseph Lacroix and of Helene Bissonette, born on the 12th May, 1803, page 129, volume 1779.

15. Clementine Lacroix, daughter of Francois Lacroix and Omaranth Bourdou, born on the 5th of August, 1836, p. 33, vol. 1835.

16e. Mary Lacroix, daughter Thomas Lacroix and Julia Hernadez, born on 15th May, 1842, p. 303, vol. 1835.

17e. Theodore Lacroix, son of Thomas Lacroix and Julia Francoise, born on 17th March, 1844, p. 226, volume 1835.

18. Helene Lacroix, born on the 3d of February, 1828, daughter of Francois Lacroix and of Amaranth Bourdeau, p. 160, vol. 1823.

19. Jeanne Lecroix, born on the 2d of June, 1778, daughter of Jean Baptiste Lecroix and of Catherine Henleneboru, p. 39, volume 1776.

20e. Lecroix Basile, 21 years old, died on the 26th of October, 1832, p. 9, vol. 1832.

21. Francois Lacroix, son of Joseph Lacroix and of Helen Bissonette of the one part, and Amaranth Bourdeaux, daughter of
127 James Bourdeaux and of Julia Lebrun of the other part, united in the sacred of matrimony, on the 25th day of April, 1827, p. 132, vol. 1781.—Marriage record.

22e. Joseph Lacroix, son of Dominique Lacroix et de Josette Papin, of Montreal, Canada, married to Helene Bissonnette, April 17, 1792, p. 16, vol. 1781.

I, Augustus Simon Paris, priest of the Roman catholic church, at the cathedral of St. Louis, in the city of St. Louis, in the State of Missouri, and keeper of the register of baptisms, marriages, and sepultures, required by the ordinances and customs of the Roman catholic church and of said cathedral to be kept thereof, do hereby certify the above extracts of the registers of the cathedral (aforesaid) are the registers; 1e, of the death of Mary Lacroix; 2, of Helene Lacroix; 3e, of Joseph Lacroix; 4e, of an infant of Francois Lacroix; 5e, of the birth of Susanne Lacroix; 6e, of Eulalie Lacroix; 7e, of the death of Charles Lacroix; 8e, of the birth of Francois Lacroix; 9e, of Julie Lacroix; 10, Mary Lacroix; 11, Mary Therese Lacroix; 12, Joseph Lacroix; 13, of Joseph Emiliene Lacroix; 14, Mary Eulalie Lacroix; 15, Clementine Lacroix; 16, Mary Lacroix; 17, Theodore Lacroix; 18, Helene Lacroix; 19, Jane Lacroix; 20,
128 Basil Lacroix; 21e, Francois Lacroix (marriage;) 22, Joseph Lacroix (marriage;) all the certificates of the births, sepultures, and marriages above mentioned, by the numbers corresponding to the numbers here related, are kept by me at above said cathedral, in faith of which I have signed.

St. Louis, 23 of February, 1855.

A. S. PARIS,
P't Rector of St. Louis Cathedral.

1855, on the 24th of February, certify that I have examined over and over again the register of births, sepultures, and marriages, and I did not find any registry of the name of Louis Lacroix.

A. S. PARIS, *Rector.*

STATE OF MISSOURI, *County of St. Louis, ss:*

Augustus Simon Paris, priest of the Roman catholic church, at the cathedral of St. Louis, in the city of St. Louis, in the State of Missouri, makes oath and says: That he is the keeper of the registers of baptisms, marriages and sepultures, as required by the ordinances and customs of the Roman catholic church and of said cathedral, to be kept thereof; that said ordinances and customs require such register to be kept; that he is rector of said St. Louis cathedral; that the foregoing certificate subscribed with his name and signature are true in substance and in fact, and that the several extracts
129 from the register of baptisms, marriages and sepultures above-written, twenty-two in number, are truly copied from said register; also, that the said Paris, rector as aforesaid, has carefully examined over and over again the said registers, and did not find any registry in the name of Louis Lacroix, up to the date of the said examination, to wit, the 24th day of February, 1855.

A. S. PARIS, *P't Rector.*

Sworn to and subscribed before me, Theophile Papin, a notary public, in and for the county of St. Louis, State of Missouri, this 30th day of November, 1857.

Witness my official signature and seal the day and year last above-written.

[SEAL.] THEOPHILE PAPIN,
Notary Public, St. Louis County.

Defendant at the time objected to said extracts, on the ground that the same were not competent evidence in this case. But the court overruled defendant's objection, and allowed said extracts to be read, and defendant at the time duly excepted.

Plaintiff then read the following deeds:

130 *Lefavre and Lecroix to Marshall, dated Aug* 5, 1840. *Marshall to Carpenter, March* 5, 1851.—*Deed.—Lafavre and Lacroix to Marshall.*

This deed, made and entered into this 6th day of August, one thousand eight hundred and fifty, by and between Colastique Lafavre and Michel Lacroix, parties of the first part, and George Marshall, party of the second part, all of the county of St. Louis and State of Missouri, witnesseth: That the said parties of the first part, for and in consideration of the sum of two hundred dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do, by these presents, remiss, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns forever, all that certain tract or parcel of land in the county of St. Louis and in the Grand Prairie common field west of St. Louis city, bounded and described as follows, to wit: All that certain tract or parcel of land in Grand Prairie common fields, containing one arpent in front by forty arpents in depth, bounded on the

south by land confirmed to Louis Laroche's representatives; on
131 the north by land confirmed to Pierre Barribeau, and on the east by the eastern boundary line of said common field lots; and on the west by the western boundary line of said grand prairie common field lots; being the same tract of land confirmed to Louis Lacroix by Theodore Hunt, recorder of land titles; as will more fully appear to the testimony of occupation and cultivation in the recorder's office of St. Louis county, pp. 123 and 4 of Book No. 1 of Hunt's minutes.

To have and to hold the above described property, with appurtenances thereunto belonging, to him, said George Marshall, his heirs and assigns forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[SEAL.] COLASTIQUE (her mark) + LAFAVE.

[SEAL.] MICHEL (his mark) + LACROIX.

STATE OF MISSOURI, *County of St. Louis, ss*:

Be it remembered that on this seventh day of August, 1850, before the undersigned clerk of the St. Louis County Court, came Colastique Lafave, who is personally known to me to be the same
132 person whose name is subscribed to the foregoing instrument of writing as a party thereto; and she acknowledges the same to be her act and deed for the purposes therein mentioned.

In testimony whereof I hereto set my hand and affix the seal of said court at office in St. Louis the date last aforesaid.

LEWIS F. LACY, *Clk.*

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this seventh day of August, 1850, beme, the undersigned clerk of the St. Louis County Court, came Michel Lacroix, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as a party thereto; and he acknowledged the same to be his act and deed for the purposes therein mentioned.

In testimony whereof I hereto set my hand, and affix the seal of said court at office in St. Louis, the date last aforesaid.

LEWIS F. LACY, *Clerk.*

133 STATE OF MISSOURI, *County of St. Louis, ss*:

I, the undersigned recorder for said county, certify that the foregoing instrument of writing was filed in my office for record, Aug. 10, 1850, and is truly recorded in Book O, No. 5, p. 164.

Witness my hand and official seal the date last aforesaid.

[SEAL.] S. D. BARLOW, *Recorder.*

Deed.—Marshall to Carpenter.

This deed, made and entered into this fifth day of March, eighteen hundred and fifty-one, by and between George Marshall, party of the first part, and Chas. J. Carpenter, M.D., witnesseth: That the said party of the first part, for and in consideration of the sum of six thousand dollars, to him in hand paid by the said party of the second part, receipt whereof is hereby confessed and acknowledged, has granted, bargained and sold, and by these presents, does grant, bargain, and sell, convey and confirm unto the said party of the second part, and his heirs and assigns forever, all that certain tract or parcel of land, in the county of St. Louis, in the Grand Prairie common fields west of the city of St. Louis, bounded and described
134 as follows, to wit: All that certain tract or parcel of land in the grand prairie common fields, containing one arpen in front by forty arpens in depth; bounded on the south by land confirmed to Louis Laroche's representatives; on the north by land confirmed to Pierre Barribeau; on the east by the eastern boundary line of said common field lots; and on the west by the western boundary line of said Grand Prairie common field lots; being the same tract of land confirmed to Louis Lacroix by Theodore Hunt, recorder of land titles, as will more fully appear by reference to the testimony of occupation and cultivation, in the recorder's office of St. Louis county, pages 123–4 of Book No. 1 of Hunt's minutes, and afterwards conveyed by deed of 6th August, 1850, by Colastique Lafavre and Michel Lacroix to party of first part, and recorded in Book O, No. 5, p. 104 of the recorder's office of St. Louis county.

To have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, unto the said party of the second part, his heirs forever, and assigns, the said George Marshall, party of the first part, hereby covenanting
125[2] that his heirs, executors, and administrators, will warrant and defend the title to the said premises, and every part thereof, to the said party of the second part, his heirs and assigns, against the lawful claim or claims of all and every person or persons whatsoever, claiming or to claim the same, or any part thereof, by, through, or under him.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first herein written.

[SEAL.] GEO MARSHALL.

Done in presence of—

STATE OF MISSOURI, *County of St. Louis, ss*:

Be it remembered that on this fifth day of March, A. D. eighteen hundred and fifty-one, before me the undersigned, clerk of the St. Louis Court of Common Pleas, in and for the county aforesaid, came George Marshall, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as party thereto, and he acknowledged the same to be his act and deed for the purpose therein mentioned.

126 In testimony whereof, I hereto set my hand and affix the seal of said court at office in the city of St. Louis, the day and year last above written.

[SEAL.] PHILIP TIPPETT, *Clerk.*

I hereby consent to ratify and confirm the foregoing conveyance, so far as I have any interest therein or any control over the same.

Witness my hand seal this 5th March, 1857.

[SEAL.] J. B. CROCKETT.

STATE OF MISSOURI, *County of St. Louis, ss*:

I, the undersigned recorder within and for the county aforesaid, do hereby certify that the foregoing instrument of writing was filed for record in my office March 6, 1851, and is truly recorded in book S, No. 5, p. 557 and following.

Witness my hand and official seal the date last aforesaid.

[SEAL.] S. D. BARLOW, *Recorder.*

Plaintiff then offered and read depositions of Eulalie Dervine, (Derwa), Antoine Reynal, Louis Tayore, and Colastique Lafavare, as follows:

Deposition of Eulalie Derway.

127 Eulalie Derway being produced, sworn and examined on the part of the defendant, deposeth and saith:

I am not acquainted with James L. Brander, Levi Churchill, Frederick B. Chamberlain or Charles J. Carpenter. I knew Louis Lacroix. I knew Louis Lacroix about fifty years ago; but the exact time I do not recollect; it may be more than fifty years; about the time I first knew him, he came from St. Louis to St. Charles, and he was then about forty or forty-five years old; he died in the upper Missouri, I think, about forty years ago, but I do not remember the time exactly; it was about seven years after I first knew him; he was never married, and left no children, and left no sisters, nor father nor mother; Paul (also called t. SPaul) Lacroix was his only brother, and survived him and died in St. Charles about fifteen years after Louis Lacroix died; Paul Lacroix was a married man; and at his death left three children; Antoine, who died without children some fifteen or sixten years ago. Michel, (in English Michael,) who died in St. Louis about a month ago, and was never married, and a daughter, Colastique, who was first married to one Dugal, and the second time to Lefevre or Lafavre; she married Lefevre about twelve years ago, probably longer; and Lefevre died some six or seven years ago, perhaps longer; Colastique lived in St. Louis county at the death of Lefevre, and resides in that county now.

128 *Cross-examined.*

By plaintiff's counsel:

[I do not know that Louis Lacroix ever cultivated a common field lot near St. Louis, and never heard him or any one else say that he had ever owned or cultivated such a lot there. I do not know of any one cultivating lots near St. Louis.

her
EULALIE + DERWAY.
mark.

Sworn to and subscribed before me on the day, at the place and between the hours aforesaid.

[SEAL.] JOS. H. ALEXANDER,
Notary Public.

Deposition of Reynal.

Antoine Reynal being produced, sworn and examined on the part of the defendant, deposeth and saith:

I am now about sixty-seven years of age. I am not acquainted with the plaintiff in this suit, but am acquainted with the defendant. I knew Louis Lacroix first about fifty-three or fifty-four years ago, at which time he moved from St. Louis to St. Charles, and was acquainted with him up to the time of his death, which took place about forty or forty-two years ago; he was unmarried at the
129 time of his death; left neither father, mother, sisters or children; St. Paul Lacroix, sometimes called Paul LaCroix, was his only brother and died in St. Charles some fifteen years after the death of Louis Lacroix; St. Paul Lacroix was a married man, and at his death left three children, a son Antoine, who died unmarried and without children, about a month ago; a son Michel, (in English Michael,) who died unmarried, and without children about a month ago in St. Louis, as I heard; and a daughter Colastique, who first married one Dugal, and after his death married one Lefevre or Lefavre in St. Louis county; Colastique is now living in St. Louis county.

Cross-examined.

By plaintiff's counsel:

I was born and lived in St. Louis until I was nine or ten years old, at which time I came wtth my father, Dr. Antoine Reynal, to St. Charles. I knew the Grand Prairie common fields near St. Louis, and knew of various persons cultivating lots there, but never knew of Louis Lacroix or any other Lacroix cultivating a lot in the said common fields.

ANTOINE REYNAL.

Sworn to and subscribed before me, on the day, at the place, and between the hours aforesaid.

JOS. H. ALEXANDER,
Notary Public.

130² *Deposition of Louise Tayon.*

Louise Tayon, of lawful age, being duly sworn and examined on the part of the defendant, deposeth and saith:

I am seventy-two years of age. I was born in St. Louis. I have seen Louis Lacroix once in St. Charles at his brother's. I never saw him in St. Louis. I have never known but one Louis Lacroix.

her
LOUISE + TAYON.
mark.

Deposition of Colastique Lefaivre.

Colastique Lefaivre, of lawful age, being sworn and examined on the part of the plaintiff, deposeth and saith:

I was born in 1808 in St. Charles; my father's name was Paul Lacroix; his proper name was Paul Lacroix; some used to call him St. Paul Lacroix; in 1826 I was first married; my first husband's name was Xavier Dugal. I can't swear when my father died. I heard, but can't say of my own knowledge; until I was first married, I lived with my aunt at St. Charles; after I was married I moved to St. Louis. I never saw my father to my knowledge; my aunt never told me, to my recollection, when my father died. I never saw my uncle Louis Lacroix. I have never heard of any of my family
131² say when my uncle Louis died, but I have heard others say that he died in Missouri. I don't know whereabouts in Missouri. I don't know what my uncle's business was. I heard that my father was a trader on the river in Makinaw boats, but I don't know myself. I can't say how many years before my first marriage I first heard of my father's death. I can't tell how many years before my first marriage I heard of my uncle Louis death.

Cross-examined.

By John M. Krum, esq., att'y for defendant.

Question. You never heard, did you, any relatives or members of your father's family say where he died?

Answer. No, sir.

Quest. You never heard, did you, any relatives of your uncle Louis say where he died?

Ans. No, sir. I have lived in St. Louis city and county about thirty-three years.

her
COSLATIQUE + LAFAIVRE.
mark.

Witness—
E. W. DECKER.

The defendant, at the time said deposition of Eulalie Dervine was offered, objected to such parts as are marked and included in [brackets], on the ground that the parts so objected to, are not
132² competent evidence in this case. But the court overruled defendants said objection, and allowed said parts of said deposition objected to to be read, and defendant at the time duly excepted.

Plaintiff then read, in evidence, the burial certificate of St. Paul Lacroix, dated November 21, 1814, as follows:

(Inserted on p. 123.)

Defendant objected to the same as incompetent, but the court overruled the objected, allowed said certificate to be read, and defendant at the time duly excepted.

Testimony of B. Pratt.

Bernard Pratt, called by plaintiff, testified as follows:

I am sixty-three years of age. I was born in St. Louis, and have always lived here. I remember Joseph Lacroix from my earliest recollection; he lived on Third street, between Olive and Locust. I knew him fifty years ago. I was well acquainted with the people here when I was a boy; there were 1500 to 2000 people here then. I do not know when Joseph Lacroix died. I think I knew all the French inhabitants who resided here, from the time I was 10 to 20 years old. I never knew a man by the name of Louis Lacroix.
133² I knew Michel Lacroix, who married Miss Hay; he died about forty years ago; his children were, Madam Montoigane, Joseph, jr.; he was a laboring man, and died in our employ up the Missouri; Madame Guibor, Madame Ruelle and Francois Lacroix; old Joe Lacroix was illiterate man; he could neither read nor write. I knew Pierre Barribeau.

Plaintiff then read the following deeds, to wit: Colastique Lafavre and Michel Lacroix to George Marshall, both dated Aug. 8, 1850, and deed of Geo. Marshall to C. J. Carpenter, dated March 5, 1851

(Inserted on pages 130–133.)

Plaintiff then read testimony of B. Marechal, as the same appears in transcript of record in this case, filed in Supreme Court Mch. 3, 1860, as follows:

Testimony of B. Marechal.

B. Marechal, for defendant, testified that he was 69 years old, and he had lived here near St. Louis since 1814; that is he first lived here, and in 1814 went to Carondolet to live; witness knew one Lacroix here in St. Louis and knew Louis Lacroix in St. Charles;

knew him in 1801, and saw him last in 1813; saw Louis Lacroix here in St. Louis about 1810 or 1811.

On cross-examination witness said:

That he knew Joseph Lacroix in 1814; knew him well, and
134[1] where he lived and worked; made lime with him; [witness knew all the old inhabitants in St. Louis, and never knew a man here by the name of Louis Lacroix.]

Defendant at the time objected to the parts included within [brackets], on the ground that the parts so objected to are incompetent evidence in this case; but the court overruled defendants objection and allowed said parts to be read, and defendant at the time duly excepted.

Extracts from Hunt's minutes.

Plaintiff then offered to read testimony from the recorder Hunt's minutes, as follows:

Testimony relating to town and village lots, out-lots and commonfield lots, in, adjoining or belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondolet, St. Genevieve, New Madrid, New Bourbon, Little Prairie and Mine a Burton in Missouri, and the village of Arkansas in the Territory of Arkansas, as directed by an act of Congress, passed May 26, 1824.

THEODORE HUNT, *Recorder of L. T.*

Louis Lemonde, claiming a lot in the city of St. Louis, bounded on the east by Church st., on the south by a street leading
135[2] to the Mississippi, North D, on the north by a lot at present occupied by John Bapt'e Giguaires, on the west by Third st., proven a notice to Frederick Bates, esq., dated 23d May, 1808. D. p. 165.

Pierre Barribeau, being duly sworn, says: He has known the claimant, Louis Lemonde, for thirty years to occupy the lot claimed; that about that time the lot was vacant, and that Lamonde built a cabin on said lot, and has occupied it ever since; that it was half of a square, containing one hundred and twenty feet fronting on Church st., and three hundred feet deep, at the time Lemonde took possession of said lot; since that time Lemonde has sold a part of said lot, how much, he does not know, nor the time precisely, but believes it was about ten or twelve years since.

his
PIERRI × BARRIBEAUX.
mark.

Sworn to before me this 13 Feb'y, 1825.

THEODORE HUNT,
Recorder L. T.

John G. James, living in the village of St. Ferdinand, claims six lots in village of St. Ferdinand, on the plot in record book E, p. 299, as lots No. 4, No. 5, No. 73, No. 74, No. 75, No. 76.

Joseph Presse, an ancient inhabitant, and living near to said village, was produced, who, being duly sworn, says: That
136 Joseph Hubert was in possession of lot No. 4 twenty-five or six years ago; since that time it has been in possession of several persons; that there was a house on the lot at the time he first saw it in possession of Hubert; the lot is now in possession, and has been for ten or twelve years in possession, of J. G. James.

The said witness says as to lot No. 5, he saw it in possession of Gagne, about twenty-six years ago, and that he knows Gagne gave it to his daughter who married Antoine Dejarlais; that there was a male house on it, and the lot fenced in; that it has been in the possession of same person ever since; that these two lots form one block, bounded on the west by Church st., on the east by Rue St. Pierre, and on the north and west by Cross streets; and the square contains three hundred French feet.

his
JOSEPH × PRESSE.
mark.

Sworn to before me Feb'y 14, 1825.

THEODORE HUNT.

Witness present—
HUBERT GUION.

137 Joseph Presse, the same witness, being duly sworn, says: That he knows that No. 74 was in possession of a man by the name of Francis Deloria at the time the witness came to the country about thirty years since; to his judgment, about the size of a common lot of one hundred and fifty feet square; and has always been claimed by said Deloria, and since his death, by the heirs of said Deloria. There was no house on it at the time, but it was fenced in and cultivated by said Deloria. Never knew Mr. Deloria to cultivate more than about the size of a lot one hundred and fifty feet square.

his
JOSEPH + PRESSE.
mark.

Sworn to before me Feb'y 24, 1825.

THEODORE HUNT,
Recorder, L. T.

Witness present:
HUBERT GUION.

John G. James claims an outlet adjoining the village of St. Ferdinand, No. 40, on the plot.

Joseph Presse being duly sworn, says: He knows the land, and knows it to have been in possession of Francis Bernard, (alias Francis, European,) about twenty years since.

his
JOSEPH + PRESSE.
mark.

Sworn to before me Feb'y 24, 1825.

THEODORE HUNT, *R. T.*

Witness present:
HUBERT GUION.

138 Joseph Lacroix claims a lot in the city of St. Louis, on Third or Barn st., of one hundred and twenty feet, French measure.

Pierre Barribeau, being duly sworn, says: He knows the claimant Lacroix to be in possession of a lot in this city, on the hill where Lacroix now lives, bounded eastwardly by Third (or Barn) st., north by a lot at present occupied by Michael Bertrand, west by the common field, south by Cross st., north C st; and that Lacroix had been in possession of the same for twenty-eight or thirty years, and ever since; and at the time he first got possession built a house, in which he now lives; that since that time he, Lacroix, had sold the northern part, of how much the witness does not know. Certfe. delivd.

his
PIERRE + BARRIBEAU.
mark.

Teste: M. P. LEDUC.

Sworn to before me—

THEODORE HUNT, *Recorder, L. T.*

MARCH 3, 1825.

Pierre Barribeau, claiming a lot in the city of St. Louis, one hundred and sixty-four feet front by two hundred and twenty-five feet to Third st. in depth, French measure, bounded eastwardly by Second or Church st., north by north F st., west by Third st., and south by lots at present occupied by Berry Michum and William Rector.

139 Joseph Lacroix, being duly sworn, says: He has known the claimant, Barribeau, to have been in possession of said lot thirty-five years at least, and that he has lived on said lot ever since. Certf. deli'd.

his
JOSEPH + LACROIX.
mark.

Test: M. P. LEDUC.

Sworn to before me—

THEODORE HUNT, *Recorder, L. T.*

Louis Lacroix, claiming one by forty arpens, a field lot in Big Prairie, St. Louis, bounded on the north by Pierre Barribeau, south by Paul Le Grandeur (alias Guitard,) east and west by vacant land.

Pierre Barribeau, being duly sworn, says: He knows said lot; and knows that claimant cultivated the same thirty years ago, and continued to cultivate the same for ten or twelve consecutive years; and was in possession of the same ever since. Cert. del'd.

his
PIERRE + BARRIBEAU.
mark.

Test:
M. P. LEDUC.

Sworn to before me—

THEO. HUNT.

Pierre Barribeau, claiming one and a half by forty arpens in Big Prairie, St. Louis, bounded on the north by a lot formerly belonging to Benito Vasquez, on the south by Joseph Lacroix, and on the east and west by vacant land.

Louis Lacroix, being duly sworn, says: He knows said lot, and that claimant, Barribeau, has been in possession of same for
140 thirty years, and cultivated the same for ten or twelve consecutive years. Certif. del'd.

his
JOSEPH + LACROIX.
mark.

Test:
M. P. LEDUC.

Sworn to before me—

THEODORE HUNT,
Recorder, L. Tls.

Defendant at the time objected to the reading of said minutes on the ground that said minutes are incompetent evidence in this case; but the court overruled defendant's objection and allowed same to be read as evidence of notice of the claim, but for no other purpose. Defendant duly excepted to the decision of the court.

Plaintiff then read deed of Williams and wife to Gray & Kellogg, Sept. 9, 1858.

Deed of Williams & Kellogg.

This deed, made on the ninth day of September, eighteen hundred and fifty-eight, by and between Henry W. Williams, Rose, his wife, of the city of St. Louis, county of St. Louis, State of Missouri, parties of the first part, and Melvin L. Gray and Sanford B. Kellogg, of the same city, county and State, parties of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of ten thousand dollars to them paid by the said parties of the second part, the receipt of which is hereby acknowledged,
141 do by these presents, grant, bargain and sell, convey and confirm unto the said parties of the second part, that certain piece, parcel or tract of land situated in the county of St. Louis aforesaid, bounded and described as follows, to wit: commencing at a point in the north line of the Olive street plank road, where the same is intersected by the western line of Grand or Lindell avenue, in the city of St. Louis; thence running westwardly with the north line of the said Olive st. plank road eighteen hundred feet; thence northwardly at right angles one hundred and sixty-seven feet and six inches, to the south line of the tract commonly known as the Barribeau tract; thence eastwardly with the south line of the Barribeau tract, eighteen hundred feet to Grand avenue; thence southwardly with the west line of Grand avenue, one hundred and sixty-seven feet and six inches, to the Olive st. plank road, the place of beginning. Bounded east by Grand avenue, south by the Olive st. plank

road, west by a line eighteen hundred feet distant westwardly from Grand avenue, and north by the south line of said Barribeau tract. To have and to hold the same, with all the rights, immunities, privileges and appurtenances hereunto belonging, unto the said parties of the second part, and their heirs and assigns forever; the said
142 Henry W. Williams, hereby covenanting, that he and his heirs, executors and administrators, shall and will warrant and defend the title to the said premises unto the said parties of the second part, their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said parties of the first part have hereunto set their hand and seal the day and year first above written.

[SEAL.] HENRY W. WILLIAMS.
[SEAL.] ROSE WILLIAMS.

Signed, sealed and acknowledged in the presence of the undersigned.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered, that on this ninth day of September, 1858, before me the undersigned, a notary public in and for said county, came Henry W. Williams, and Rose, his wife, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned; and she, the said Rose Williams, after having been by me made acquainted with the contents of said instrument, acknowledged on an examination separate and apart
143 from her husband, that she executed the same, and relinquishes her dower in the real estate therein described, freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my official signature and seal the day and year last above written.

CHAS. H. TILLSON,
Notary Public, St. Louis Co. Mo.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office, Sept. 10, 1858, and is truly recorded in book 202, p. 407.

Witness my hand and official seal the date aforesaid.

C. KEEMLE, *Recorder.*

Testimony of Henry D. Gorman.

Henry D. Gorman, called by plaintiff, testified:

[I have been engaged as examiner of titles for some time. I can find no deed to or from Louis Lacroix in the records of St. Louis county, from the beginning of the archives in 1766, down to the present time.]

Defendant objected to this testimony on the ground that the same is not competent evidence in this case; but the court admit-
144 ted the testimony; and defendant at the time duly excepted.

Testimony of Leffingwell.

H. W. Leffingwell, called by plaintiff, testified:

I am real estate agent, and know the land in controversy. It is worth about $25 00 per foot front. I have no idea of its monthly value.

Testimony of A. Chemi.

Antoine Chemi, called by plaintiff, testified:

I am fifty-eight years old; was born in St. Louis; I knew a great many of the old inhabitants. I knew Joseph Lacroix; he lived on Olive between 3d and 4th sts., north side. He was engaged in lime burning. Never knew Louis Lacroix. Joseph Lacroix was an old man when I knew him. I knew Pierre Barribeau.

Plaintiffs then rested.

Testimony of G. Marshall.

George Marshall, for defendant, testified as follows:

I have known the land in controversy since 1850. I purchased it from David Desilets, and the deed now shown me is the deed he made to me. He had a tenant on the land; and he also had tenants on the east and of the Barribeau tract. When I purchased of Desilets, his tenants atoned to me, as they continued my tenants
145 until I sold out to Carpenter, the defendant. I took Carpenter there, and told the tenants this was their landlord, and they seemed to assent. When I purchased Desilets was living in a frame house with an orchard round it. He had a small house, quite a large field enclosed, and he had an orchard lower down. There was another house on the Hardie and Petties tract, where a family lived. Opposite to Desilets' house, and near to the line of Lacroix and Barribeau, was a house where a family lived. This was on the Lacroix tract. Then there was another house, where there was a well. There was a house also on the Barribeau tract. The tenants on both tracts, the Lacroix and Barribeau attoned to me when I bought of Desilets, and they paid rent to me regularly, until I sold to Carpenter.

I gave Desilets $1000, and I also paid $200 to the heirs of Louis Lacroix.

When I purchased, I knew nothing, and had no information of any kind, of any claim of the heirs of Joseph Lacroix upon the land I bought. Carpenter paid me $6000, and paid the whole amount within a year or two, and before any litigation sprang up in respect to the land.

There were two other small houses on the Lacroix tract; there

were brush fences round these cabins when I purchased. Af-
146 ter Carpenter purchased he put up better fences, and enclosed the whole of the land I sold him. He made all of his enclosures before I ever heard of any claim to the land by the legal representatives of Joseph Lacroix.

On cross-examination, witness said: Before I purchased, Desilets showed me a deed from parties in Canada for Lacroix, also for Barribeau. I do not recollect by whom they were made. I did not examine the title when I purchased; Crockett told me the title was good. Desilets gave me all these papers relating to the land that he had. I don't know where they are now; but I think I gave them to Carpenter. I bought the possessions of Desilets; Desilets lived south of Lacroix tract, near west end of common field. I gave $1000 to Desilets for his possession of both tracts, the Lacroix and Barribeau tracts. I did not consider the purchase of the Barribeau tract anything.

Before I sold to defendant, and about two months after I purchased of Desilets, I purchased the interests in the lands of the heirs of Louis Lacroix; Mr. McCammant attended to procuring the conveyance from the heirs of Louis Lacroix. I sold my interest in the Barribeau tract to Bacon & Fulkauser. Crockett told me that it was a good spec. to buy out Louis Lacroix's heirs; that the title was
147 good. The title was in my name. I advanced the money for Crockett, and he was to have one-third. I knew Judge Townsend. I never heard of any claim of his, or of M. L. Gray's, in respect to the Lacroix tract until after I sold to Carpenter. I saw the proofs before Hunt, and the confirmation to Louis Lacroix, before I purchased.

On re-examination by defendant, witness said: The four tenants who attoned to me had possession of both the Lacroix and Barribeau tracts. The man on the Barribeau tract lived east of the gully, and near the cultivation that was on the Lacroix tract. He also cultivated over on to the Lacroix tract; raised cabbages and other vegetables.

Testimony of David Desilets.

David Desilet called by defendants, testified as follows:

I have lived here in St. Louis 31 years; I know the Lacroix tract of land, and have known it since 1844. I sold it to George Marshall and McCamant. I had four tenants on this tract in 1844; two of them were French, and two were Germans. They put up frame buildings and cultivated ground around them; raised vegetables.

I was agent for another person at first. The most eastern tene-
148 ment was 7 or 8 arpents west of the east end of the Lacroix tract. I was on the land every week after I got it in 1844, until I sold the land to Marshall. There was then no survey of the land that I knew of; and when the survey was afterwards made, it was found that the house of one of the tenants was on the Barribeau tract; it was said so. I went into possession under Cedteaux. Nobody

occupied the land from 1844 to the time I sold it to Marshall except myself and my tenants.

On cross-examination, witness said: I did not buy the land, but was put in possession by Croteau in 1844. It was called the Benito Vasquez tract. That it was the Lacroix tract when the surveys was made, but I found out afterwards that it was next south of the Barribeau tract. The land I lived on was the Laroche tract. The Croteau land was bounded north by Barribeau, and south by Laroche. I recollect that Cozzens surveyed these, but can't recollect the year. I went into possession 3 or 4 years before Cozzens surveyed there. I knew Cofield, but never had any business with him. McAmant came to buy of me in 1850; Cozzens had then made his survey. I then knew where the Vasquez tract was located by his survey. It was 3 arpents north of the Lacroix tract. From the time of his survey no one was in possesion of the Lacroix tract but myself and my tenants, up to the time of my sale to Marshall. I don't
149 recollect Judge Townsend; think I have seen Townsend. I think Cofield once came to see me and the land; he asked me to sell my possessions to him; I refused. He said the land belonged to him. This I think, was in 1846 or 1847. McAmant and Marshall took possession about the same time. When I took possession in 1844 the neighbors about there called the land the Vasquez tract, and I thought it was the Vasquez tract. I made a deed to McAmant for a portion of the Lacroix tract that I did to Marshall. They gave me $1000, and I gave possession to each of them. My sale included my possession on the Barribeau tract; I gave possession of both tracts to these parties in 1850. My own land, on which I lived, was in the Alexis Marie or the Belcour tract, so-called. I had in the Lacroix tract and the Barribeau tract in my possession, because I took two large tracts from Croteau after Cozzens' surveys. I had one tract of one arpent in possession for Croteau, north of Barribeau. I owned myself 3 by 20 arpents on the west end end of Laroche and Marie tracts. Croteau died in 1849. I sold my own possession and the possession of Croteau. Marshall knew of Croteau's death when I sold to him.

Defendant then read in evidence the following depositions, viz:

150 Louis Martin, Henry Morin, and Jacques Labbe dit Nois, as follows:

Testimony of Louis Martin.

Louis Martin testified: I was born in St. Louis; am now sixty years old; have lived since 1844; before that, lived and had a farm in Illinois. I moved with my father to Cahokia about forty-five years ago, when I was 15 years old.

I knew a man named Louis Lacroix, here in St. Louis, and afterwards in Illinois; I knew him about 45 years ago; knew him in Illi-

nois at the same time; I was 15 years old when I first knew him; he lived sometimes at St. Charles with his brother, and sometimes at Cahokia until he went up the river. I saw him fifty times in St. Louis; he boarded here in St. Louis; I was never at his boarding house; I lived on the other side of the river; it is 32 or 33 years since I saw him last; Louis Lacroix' residence was at St. Charles, with his brother, who traded with the Indians. Do not know the Grand Prairie common field. Louis Lacroix was 25 or 30 years older than myself. I did not ask his age.

Cross-examined.

By plaintiff's counsel:

I have been married about 40 years. I was 24 or 25 years old when I was married. I was married the last time I saw Louis Lacroix; had been married 8 years at that time. I was at
151 market in St. Louis when I saw him last. Louis Lacroix was never married; he died up the Missouri; did not notice the time of his death.

I knew St. Paul Lacroix; cannot say which died first, St. Paul or Louis Lacroix; saw Paul Lacroix after I last saw Louis; saw him about 27 or 28 years ago. Saw St. Paul Lacroix last; they had been in business together. I went up the river with them one trip; Louis Lacroix never came back after the last time I saw him. I saw St. Paul Lacroix two or three years after that; saw him five or six times. St Paul Lacroix is dead; can't say when. Had heard of Louis Lacroix's death when Paul died. I was twenty years old when my father died; my father was dead when I married; I did not live at my father's house after marriage.

Re-examined.

It is 30 or 33 years since I last saw Louis Lacroix. Before that I went to the mountains with him. It was up the Illinois river. It is 28 or 29 years since I went up the mountains with him. After I went to the mountains I came back alone and left him there; saw him after that, four or five years after. He went up the Missouri and I never saw him again. He remained a week or two after he came down and then went back.

Deposition of Henry Morin.

Henry Morin, of lawful age, being sworn and examined on the
152 part of the defendant, deposeth and saith: I am 68 years old. I was born and raised in St. Louis, and always lived here. I have known a man by the name of Louis Lacroix here in St. Louis. I saw him for the first time some 60 years ago. I saw him for the last time some thirty-two or thirty-three years ago. Between those two dates I saw him frequently and was with him frequently. The first time I saw him, he might have been some twenty-eight or twenty-

nine years of age. I have know Louis Lacroix to claim some land in the vicinity of St. Louis, that land is on the St. Louis Grand Prairie. I knew Pierre Barribeau very well; Pierre Barribeau owned some land in the St. Louis Grand Prairie. The land claimed or owned by Pierre Barribeau was adjoining that owned or claimed by Louis Lacroix. Barribeau and Lacroix were acquainted together and friends. I have known a man by the name of Paul Lacroix; Louis Lacroix and Paul Lacroix were brothers; Paul Lacroix had a family. He was married in St. Charles. Paul Lacroix resided in St. Charles. I don't whether he was married here in St. Louis or in St. Charles. He married a Miss Crusot. I don't know whether Paul Lacroix is dead or alive. Paul Lacroix had a son and a daughter. Louis Lacroix went up the Missouri river, and his parents and relatives received
153 intelligence that he had been killed in the mountains. I was acquainted with a man named Lacroix Bissonette here in St. Louis. He was generally called "old Lacroix." I never heard him called Joseph Lacroix. I never paid much attention to that. He lived near a place called Calvary, where there was a cross, and where the people went to worship. Lacroix Bissonette was a lime burner. I have never known him to claim any land in St. Louis Grand Prairie. He owned the land on which he lived, but did not own any in the St. Louis Grand Prairie.

Cross-examined.

Lacroix Bissonette did not own any land in the Grand Prairie, to the best of my knowledge. I have known several men by the name of Pierre Lacroix. I never knew any man by that name who claimed any land in the Grand Prairie.

I never knew any man by the name of Michel Lacroix. Paul Lacroix was a trader. I don't know whether Paul Lacroix was sometimes called Michel Lacroix.

Q. You have said in your direct examination that Louis Lacroix claimed land in the Grand Prairie. How do you know that he claimed land there.

A. I know that because young men would talk between themselves and say that they had land there. I never saw Louis
154 Lacroix cultivate any land in the Grand Prairie. I remember when the common field fence fell down; I cannot tell how long before the change of government. I never paid much attention to that. When I first saw Louis Lacroix, I might have been thirteen or fourteen years of age. Louis Lacroix came from Canada. He was a Canadian. I don't know with whom he came here. I don't know Mr. Todd. I have known two brothers of his. The brothers names were Louis, Paul, and don't remember the name of the other. I don't know that he had any sisters. Louis Lacroix and Lacroix Bissonette were not related; at least I never heard so. I remember the St. Louis Grand Prairie before the change of the government. I was there nearly every day.

I knew Louis Proavncher. He owned some land in the Grand Prairie.

I knew Benito Vasquez. He cultivated some land in the Grand Prairie. I knew Baccane. I don't know that he had any land in the Grand Prairie. I heard so.

Louis Lacroix was a voyager, that is, he was travelling to the prairies and mountains. I don't know that that was his business all his life. I don't know that he was ever engaged in any other business. Louis Lacroix was not a married man. He never kept
155 house. He never was married. Louis Lacroix told me he had some land in the St. Louis Grand Prairie soon after I became acquainted with him. I don't know of my own knowledge that Louis Lacroix owned any land in the Grand Prairie, because I never was on his land. My knowledge of that fact is founded upon what I heard people say. Louis Lacroix came here to St. Louis before the change of government, under Spanish rule. Benito Vasquez' land was somewhere about the Cardinal Spring. I believe that Vasquez' land was north of Coude's. I don't remember, however. I don't know the land of Coude's. Barribeau's land was north of Vasquez. I don't remember though, it is so long since that I forget, so that I cannot now speak of the position of the different claims.. I think that Barribeau's land was north of Marie's; it seems to me. I am not possitive however. I cannot say for certain that I have seen Lacroix within forty years. It is not forty years since I first heard of his death. I cannot tell exactly which one of Louis Lacroix and Paul Lacroix died first, but I think that Louis died first.

Louis Lacroix was a voyager. He boarded here at Andreville's. I don't know that he lived in St. Charles, but he used to visit his brother there. Louis Lacroix told me that he had bought his land in the Grand Prairie, but did not tell me of whom. He may
156 have bought it of the Spanish government for aught I know.

Re-examined.

The brother of Louis Lacroix I spoke of before, and whose name I now forget, was never married; I never heard so. I don't know that he is dead or alive.

Q. You stated in your cross-examination that you heard Louis Lacroix and other people say that Louis Lacroix owned land in the St. Louis Grand Prairie. Now state whether it was common report and general reputation amongst the people that he did so own land.

(Objected to as incompetent and not properly arising from the cross-examination.)

A. We were all acquainted with one another, and all those that knew Louis Lacroix said that he owned land in the St. Louis Grand Prairie. It was a common and general report and reputation.

his
HENRY × MORIN.
mark

Deposition of Labbe.

Jacques Labbe's deposition; Francois Nois dit Jacques l'Abbe, of lawful age, being duly sworn and examined on the part of the defendant, on his oath deposeth and saith:

I am seventy-three years of age. I was born in St. Louis.
157 Have always lived in St. Louis, with the exception of the last eight years, which I spent in Cahokia, Ills.

Q. Did you ever know a man by the name of Louis Lacroix? If so, when and where?

A. Yes; I knew a man by the name of Louis Lacroix. I knew him forty-three or forty-four years ago. I have seen him here in St. Louis and in St. Charles. I voyaged with him. I first became acquainted with him some sixty years ago. I saw him for the last time some thirty-two or thirty-three years ago. About that time he went up the Missouri river. I don't know whether he is living or dead. I heard that he died up the Missouri river. I knew a brother of Louis Lacroix, by the name of St. Paul Lacroix, at St. Charles. I think St. Paul Lacroix is dead; I heard so. St. Paul Lacroix left children. I have know but one of those children, a girl; I don't know her name; she was familiarly called "Coco." She married a Mr. Dugal; I think she was married twice; I am not positive, however, about that; I don't know the name of her second husband. I don't know whether St. Paul Lacroix had a son or not. Louis Lacroix did not leave any wife or children; he never was married.

Q. Did Louis Lacroix ever own any land in the St. Louis Grande Prairie common field?

(Objected to as incompetent.)

A. When I voyaged with Louis Lacroix he told me he had
158 bought a piece of land in said common fields.

(Plaintiff objects to the statements of Louis Lacroix.)

Q. Do you know of Louis Lacroix owning land in the vicinity of St. Louis; and if so, when and where?

(Objected to as incompetent.)

A. I know of Louis Lacroix owning land in the vicinity of St. Louis. I think he bought that land some two or three years before the change of government. It was a common field lot in the St. Louis Grand Prairie, bounded north by Barribeau, and south by Laroche. I have known a man by the name of Lacroix Bissonette; he lived on 2d st., on the same square where the new custom-house is. At that time 2d st. was called 2d st., as now. I never knew Lacroix Bissonette except as a day-laborer. I never knew him as a brickmaker, but as a lime burner. He owned a lime kiln on the banks of the Mississippi, just above St. Louis. When he sold the land where the new custom-house is he moved between fourth and fifth sts., where he got a brick house built. The new place where he moved to is about half a square from the present custom-house. I never heard of Lacroix Bissonette owning any land either in the St. Louis Grand Prairie or any-
159 where else. I was very well acquainted and intimate with

Lacroix Bissonette. I was well acquainted with all the inhabitants of St. Louis before the change of government.

Q. Were you well acquainted with those inhabitants of St. Louis that cultivated lands in the St. Louis Grand Prairie before the change of government?

A. Yes, I was.

Q. If Lacroix Bissonette had cultivated any land in the Grand Prairie next to Barribeau, would you not have known it?

A. I should have known it.

Q. Did Lacroix Bissonette ever cultivate any land in that part of the Grand Prairie prior to the change of government?

A. Lacroix Bissonette never cultivated any land in that part of the St. Louis Grand Prairie, either before or after the change of government. I knew Pierre Barribeau very well. I frequently saw Pierre Barribeau and Louis Lacroix together. They were friends.

Cross-examined.

By plaintiff:

Q. Did Lacroix Bissonet, under the Spanish government, ever cultivate, inhabit or possess any lot or lots in St. Louis?

(Objected to as irrelevant and incompetent.)

A. Yes; in St. Louis he did; same lot I spoke of before.
160 He claimed that lot as his own. I never knew him to own any lot except the one just spoken of. Lacroix Bissonette and Pierre Barribeau were good friends. I don't know whether they work together or not. Barribeau was a carpenter. Louis Lacroix came here from Canada with a Mr. Todd. He was a Canadian.

Q. Did you ever hear Louis Lacroix say that he had brothers and sisters in Canada?

(Objected to.)

A. I never heard him say any such thing. At the time of the change of government I was about twenty-two years of age. Mr. Todd came to St. Louis some sixty-two or sixty-three years ago. When I first became acquainted with Lacroix Bissonette he might have been twenty or twenty-two years old. When I first saw him I was some ten or eleven years of age. He was much older than I was. There was no fence on the Grand Prairie; there was a fence around the town and the commons; the fence around the common field fell down some two or three years before the change of government.

Q. How do you know that Louis Lacroix had a lot in the Grand Prairie?

A. Because Lewis Lacroix told me so, as I stated before;
161 Louis Lacroix told me that he let this lot to Benito Vasquez to cultivate it. I said that Louis Lacroix told me that he had bought that lot; he told me he bought it of old Mr. Beccanne. Beccanne lived in St. Louis, and then went to Florissant. I have never known Mr. Beccanne to cultivate a lot in the Grand Prairie; he was too old. The lot next to Becanne's was Bequette's. I have known Louis Provenchere; he cultivated a lot in the Grand Prairie, which

was a one or a one and a half arpent lot, I don't know exactly. The lot cultivated by Louis Provenchere was south of Laroche, south of a lot now owned by Desilet, and south of Marie. Lacroix Bissonette had a wife and children. I never knew any of his children except a son by the name of Francois, who died some 4 years ago at Cahokia. I cannot tell how old I was when I first saw Louis Lacroix. Louis Lacroix might then have been fifteen, twenty or twenty-two or three years of age, I cannot say. Louis Lacroix was voyageur. I have never seen him cultivate a lot in the Grand Prairie. As I stated before, he let a lot to Benito Vasquez, to cultivate it for him. I have seen Vasquez cultivate that lot. I was not present when Louis Lacroix let that lot to Vasquez; I only heard him say so. I heard both Lacroix and Vasquez say so. Louis Lacroix was a voyageur up to the time of his death. I first heard of his death some thirty-
162 two or thirty-three years ago.

Q. Did you hear he died at Cote sans dessein?

(Objected to.)

A. I have heard that he died somewhere in the State of Missouri, but I don't know where. As I stated, Louis Lacroix was a voyageur; sometimes he lived in St. Louis for one or two months, or a year at a time; sometimes he stopped with his brother at St. Charles; he had no home; he boarded here and there; when in St. Charles, with his brother; when here in St. Louis, with Mr. Hortiz, and sometimes with some other person. I don't know that he ever lived at Portages des Sioux. Louis Lacroix left St. Louis some thirty-two or three years ago; soon after that I heard that he was dead. I saw him for the last time some thirty-two or thirty-three years ago; it is impossible for me to state how many years it is since I first saw him. Louis Lacroix might then have been fifteen, eighteen, twenty or twenty years old; Louis Lacroix was older than I was. He voyaged with me once to the Belle Riviere. Lacroix voyaged for Philipson, and so did I. I don't know for whom he voyaged the last time he
163 went up the Missouri river. He might have been a member of or employed by the great company; by great company I mean a company in St. Louis which had agents north and west to buy furs from the Indians; I never knew that company except by the name of the Great Company; I don't know who was the agent here for that company; I never was employed by that company. Pierre Barribeau lived on 2d st. in St. Louis; his lot extended from Second to Third st. He died here in St. Louis at his dwelling house on the lot here spoken of; I don't remember exactly when he died; it might be some twenty-five or thirty years ago. I might have been seven or eight years old when he first came here, and have always known him ever since. I know Barribeau's lot in the Grande Prairie; he cultivated it before the change of government; I saw him cultivate that lot before and after the change of government; the lot north of Barribeau's was owned by Jaques Fortin; I saw Jaques Fortin cultivate that before the change of government; after his death nobody cultivated it; he left St. Louis in eighteen hundred and seven, to go to New Orleans; how long after that he died I don't know. The lot north of Fortin's

was owned by Coude; Coude was a doctor; I never saw him; but he had lands which he cultivated in the Grande Prairie. I know
164 the lot of Laroche's in the Grande Prairie; part of the Olive St. plank road passes on the northern part of that lot. I have known Laroche; I have never known anybody by the name of Laroche except the man here spoken of. It might be some sixty years since he died, more or less. I saw Laroche cultivate that lot; I was then young, ten or eleven years of age. After Laroche's death nobody cultivated that lot.

Mr. Belcourt married Laroche's grand daughter, and took possession of that lot some twenty-five years ago. I never knew that lot to be cultivated by a man by the name of Liberge; I have known Francois Liberge; he was my cousin; he died some 42 or 43 years ago, or thereabouts; I never knew him to own a lot in the Grande Prairie. The lot next south of Laroche's was owned by Alexis Marie; it was a two by forty arpent. I saw Marie cultivate that lot before the change of government. There was Alexis Marie sr., and Alexis Marie jr., father and son; I knew both of them; the old man was a rich merchant. The lot was cultivated by the young man.

Jean Louis Provencher owned the lot next south of Marie's. Provencher's lot was one and a half arpents, or about, in width, by forty arpents deep. I saw Provencher cultivate that lot before the
165 change of government. Old Provencher married Madame Bissette. It was he that cultivated that lot. The land belonged to Mr. Bissette, and Mr. Provencher took possession of it after his marriage with Bissette's widow.

Corneau owned the lot next south of Provencher's. The lot next south of Corneau's was owned by Barcelona. Baptiste Marli owned the lot next south of Barcelona. The next lot was owned by Vincent Guidard. I don't know how far south of Barcelona's was Bacanne's, or Becanne's. I don't know whether Becanne had any claim south of Barcelona's. I don't know that Becanne owned any other lot except the one he sold, as I have already stated. I have seen Vasquez cultivate Lacroix's lot. I never saw Becanne cultivate that lot; I suppose I was not born at that time. I saw Vasquez work upon that lot before the change of government; I don't know how long before. Vasquez' first name was Benito. He was a Spaniard. He cultivated that lot before the change of government. After that there was no cultivation. I don't remember the time that Lacroix told me that he bought that land.

I have known Benoist Marechal. I don't know whether he is dead or living. I don't know whether he and Louis Lacroix were friends or not. I don't know whether they came together to St. Louis, or not.

his
FRANCOIS × NOISE.
mark.

166 These depositions were read from transcript of record, filed March 3, 1860, in Supreme Court.

Defendant put in evidence the following leases, viz:

Lease.—Desilets to Yawfovod.

This lease, made this 18th day of February, A. D. 1850, by and between David Desilets, of the first part, and Michel Yawfovod of the second part, witnesseth: That the said D. Desilets, in the consideration of the rents hereinafter reserved, and of the covenants entered into, has granted, demised, and to farm-let, and does by these presents, grant, demise, and to farm-let unto the said Yawfovod the piece of land presently occupied by Victor Shakspin bounded on the north side by Pierre Barribeau; on the south side by Jean Baptiste Belcourt; on the east side by the said Desilets, and on the west side by the "tract querrie." To have and to hold the same unto him, the said Yawfovod, his heirs, executors and administrators, for and during the full end and term of one year from the first day of March next, ending at the same time in 1851, yielding and paying therefor the sum of forty dollars per annum, payable twenty dollars in six months, and twenty dollars at the expiration of the year. And the said Yawfovod, in consideration of the
167 premises, hereby agrees to pay to the said Desilets the said sum of forty dollars; and at the expiration of the lease, to deliver up to the said Desilets, or his heirs, executors, or administrators, peaceable possession of the said lot of land. The said Michel Yawfovod shall not have the privilege of leasing the said lot of land to anybody. For the due execution of these presents, and the payment of the said sum of forty dollars, Lawrence Armbruse has promised and obliged himself for the payment of the said sum if the said Michel [if the said Michel] Yawfovod does not pay it to the said Desilets.

In witness whereof, the parties aforesaid have hereunto set their hands and seals, the day and year first above written.

Executed in duplicate.

MIESSEL YORFOVOD.
LOUIS ORUMBUNITZOR.
DAVID DESILETS.

Lease.—Desilets to Maltzner.

I have this day leased to Conrad Maltzner a tract of land in the south part Grand Prairie common fields, in St. Louis, containing five arpens, more or less, bounded south by land confirmed to Louis Laroche; north by land supposed to be confirmed to Pierre Barribeau, and west by land leased by me, November 7th, 1849, to Adam Shaffers, being the same land now occupied by said Maltzner.
168 The said Maltzner is to have possession of said land under this lease, from the first day of March, 1850. to the last day of February, 1851; and then he is to deliver the same up to me, or

my legal representatives. Said Maltzner is to pay the sum of eight dollars at the end of the term, as the rent of the said land.

In witness whereof, I, David Desilets and said Maltzner, have hereto set our hands and seals, this 15th November, 1849.

DAVID DESILETS.
CONRAD MALTZNER.

Lease.—Desilets to Shaffers.

This lease, made this 7th day of November, A. D. 1849, by and between David Des Ilets, of the first part, and Adam Shaffers, of the second part, witnesseth: That the said Des Ilets, for and in consideration of the rents hereinafter reserved, and of the covenants hereinafter entered into, has granted, demised, and farm-let, and by these presents grant, demise, and to farm-let, unto the said Adam Shaffers, five arpents of land, situated in the south part of the Grand Prairie common fields, in the county of St. Louis, bounded on the south by land confirmed to Louis Laroches, and on the north by land supposed to be confirmed to Pierre Barribeau, being the said five
169 arpents upon which the said Shaffers now resides; to have and to hold the same unto him, the said Shaffers, his heirs, executors and administrators, for and during the full end and term of one year from the first day of March next, ending the date hereof, yielding and paying therefor, the sum of fifteen dollars per annum, payable at the end of said term. And the said Shaffers, in consideration of the premises, hereby agrees to pay to the said Desilets, the sum of fifteen dollars, at the end of said term, and at the expiration of this lease to deliver up to the said Desilets, or his heirs, or executors, or administrators, peaceable possession of said five arpents of land.

In witness whereof the parties aforesaid have hereunto set their hands and seals the day and year first above written.

Executed in duplicate, in presence of—

DAVID DESILETS,
ADAM SCHAFFER.

Lease.—Desilets to Seichepinz.

This memorandum witnesseth: That David Desilets hereby leases to Francois Seichepnitz, a tract of land in the south part of the Grand Prairie common fields, in St. Louis county, containing twenty arpents more or less, and bounded south by land confirmed to Louis Laroche; east by land leased by said Desilets to Adam
170 Schaffers, Nov. 7, 1849; north by land supposed to be confirmed to Pierre Barribeau; and west by west line of said common fields, being the said land now occupied by said lessee.

Said lessee is to have and hold the leased premises for one year, beginning on the 1st day of March, 1850, and ending on the last day of February, 1851, and to pay a rent of forty dollars; twenty dollars on the first day of September, 1850, and twenty dollars on thefirst day of February, 1851.

Said lessee is not to assign or underlet the said leased premises, or any part thereof, without the written consent of the lessor, under penalty of forfeiting the whole lease.

At the end of said term, said lessee is to deliver possession of the leased premises to said Des Ilets, or his legal representatives.

Witness our hands and seals this 17th day of November, 1849.

[SEAL.] DAVID DESILETS.
[SEAL.] FRANCOIS SEICHEPNIZ.

171 Defendant put in evidence certificate of confirmation of Recorder Hunt to Louis Lacroix:

Certificate of Hunt.

	1825.		
41 No. 4 Louis Lacroix.	Feb'y 13.	March 3d. " "	St. Louis Big Prairie, arpens, one by forty.
Bounded on the north by Pierre Barribeau; south, by Paul La Grandeur, (alias Guitard;) and east and west by vacant land.		Feet.	

RECORDER'S OFFICE,
ST. LOUIS, *October 13th*, 1827.

I, Theodore Hunt, recorder of land titles in the State of Missouri, do certify the foregoing record contained in forty-seven pages, commencing with Louis Lemonde. and ending with the field lot of Titus Strickland, contains all the village lots, out-lots, and common field lots, the boundaries of which have been proven before me, under the provisions of an act of Congress, approved 26th May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, one thousand eight hundred and twelve, entitled 'An act making further (provision) provisions for settling the claims to land in
172 the territory of Missouri.' "

THEODORE HUNT.

Defendant put in deeds of David Desilets to Geo. Marshall, dated July 27th, 1850, and Lafavre to same, dated Aug. 8, 1850.

Deed of Desilets and wife to Marshall.

This indenture, made and entered into this twenty-seventh day of July, eighteen hundred and fifty, by and between David Des Ilets and Aspasie his wife, parties of the first part, and George Marshall, party

of the second part, all of the city and county of St. Louis, State of Missouri, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand dollars, to them in hand paid by the said George Marshall, the receipt whereof is hereby acknowledged, do, by the presents, remise, release, and forever quitclaim unto the said George Marshall, his heirs and assigns, all their right, title, interest, claim and demand at law or in equity, in and to the following described tracts of land, to wit: A certain tract or lot of land lying and being situate in what is commonly called the Grand Prairie common fields of St. Louis, in the county of St. Louis, containing one arpen in front, by forty arpens in depth,
173 bounded on the north by claimant unknown; on the west by the western line of said common field lots; and the south by land confirmed to Pierre Barribeau; on the east by the eastern boundary line of the Grand Prairie common field lots; it being the same lot confirmed by act of Congress of the 13th June, 1812, to Benito Vasquez, in virtue of his possession and cultivation thereof prior to the 20th December, 1803.

Also all the right, title, interest and claim of the said parties of the first part, of, in, and to a certain other tract of land in the said Grand Prairie common fields, containing one arpent in front by forty arpents in depth, bounded on the south by land confirmed to Louis Laroche's representatives; on the north by land confirmed to Pierre Barribeau; on the east by the eastern boundary line of said common field lots, and on the west by the western boundary line of said common field lots. Also all the right, title, interest, claim and demand of the said parties of the first part, of, in and to all the real estate and titles to land belonging to the estate of Pierre David Crotteau, alias David Corteau, deceased, legitimate son of Jean Baptiste Croteau, and Marie, his wife, who died in the city of St. Louis in the year 1849, wheresoever said property may be found or situated.

174 And the said parties of the first part, for themselves, their heirs, executors and administrators and assigns, do hereby covenant with the said party of the second part, that they will for ever warrant and defend the titles herein conveyed, against each, all, and every claim of Philip B. Hockaday, his heirs, executors, administrators and assigns, upon the property herein conveyed, which the said Hockaday may have, by reason of any contract of sale, or other claim whatever, with or under the said parties of the first part.

In witness whereof the said parties of the first part have hereunto set their hands and affixed their seals, this the day and year first above written.

[SEAL.] DAVID DESILETS.

her

[SEAL.] ASPHASIE × DESILETS.

mark.

Signed, sealed and delivered in presence of—

DU BOUFFOY FREMON.

STATE OF MISSOURI, *County of St. Louis, ss*:

Be it remembered that on this thirtieth day of July. A. D. 1850, before the undersigned, clerk of the St. Louis Circuit Court, in and for said county, came David Desilets, and Aspasie Desilets, his wife, both of whom are personally known to me to be the same
175 persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

She, the said Aspasie Desilets, being by me first acquainted with the contents of said instrument of writing, acknowledged on an examination separate and apart from her husband, that she executed the same freely, and without compulsion or undue influence on the part of her said husband.

In testimony whereof I hereto set my hand, and affix the seal of said court, at office in the city of St. Louis, the day and year last above written.

[SEAL.] MICHAEL S. CERRE,
Clerk St. Louis Circuit Court.

STATE OF MISSOURI, *County of St. Louis, ss*:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office, July 31, 1850, and is truly recorded in book P, No. 5, p. 80.

Witness my hand and official seal the date last aforesaid.

S. D. BARLOW, *Recorder.*

176 *Deed of Colastique Lafavre and Michel Lacroix (inserted on p. 130.)*

Also, tax receipts as follows:

62. Received of C. J. Carpenter, fifty-five 33-100 dollars, being the amount of State, county, road, and special taxes for the year 1858, in St. Louis county, on real estate, as below detailed, including poll and personal property:

Acres.	100ths.	Survey.	Sec.	Township.	Range	Lot.	Block.	Addition, town, or village.	Front.	Deep.	Description of real estate. NE. SW.	Valuation.	Amount.	
4	Arps.							Cul de Sac.			Rock Spring, Kayser.	1500	State tax,	$13 13
											Kayser, marshals.		County..	25 50
28								Grand Prairie com. f'ds.			Hale et al. schools,	4800	Special...	12 75
											Hardely Taylor, personal property.	75	Road....	3 95
														55 33
												6375		31 87
														$87 30

St. Louis County, May 26, 1857.

GEORGE SMIZER,
By EDW'D E. ARCHER, *Dep'ty Collector.*

Received of Dr. C. J. Carpenter forty 80-100 dollars, being the amount of State, county and real taxes for the year 1855, in St. Louis county, on real estate, as below detailed, including poll and personal property:

Acres.	100ths.	Survey.	Sec.	Township.	Range.	Lot.	Block.	Addition, town, or village.	Front.	Deep.	Description of real estate. NE. SW.	Valuation.	Amount.	
28	3							Gr. Prairie common fields.			Hals ed school, Hardy & Peters, Taylor co.	4800	State tax..	$9 60
													County.....	19 20
													Road.....	2 40
													Special.....	9 60
														40 80
														33 60
														$74 40

St. Louis county, Jan. 4, 1856.

GEORGE SMIZER,
By J. W. SMIZER.

177 Received of Dr. Chas. J. Carpenter, thirty-five 30-100 dollars, being the amount of State, county and road taxes for the year of 1852, in St. Louis county on real estate as below detailed, including interests and costs.

Acres.	100ths.	Survey.	Section.	Township.	Range.	Lot.	Block.	Town or village.	Front.	Deep.	Description of real estate.	
			Lot	10							The Grand Prairie common fields.	11 84 23 21 25 35 30

St. Louis county, Oct. 12th, 1853.

JOHN BRADY SMITH, *Collector.*

Received of Dr. C. J. Carpenter, ten 80-100 dollars, being the amount of State, county and road taxes for the year 1853, in St. Louis county, on real estate as below detailed, including poll and personal property.

Acres.	100ths.	Survey.	Sec.	Township.	Range.	Lot.	Block.	Addition town or village.	Description of real estate.	Valuation.	Amount.	
15	arpe	ns p	airie	lot		10	Gra	nd Prai	rie Coons, *et al.* school, pett'n Matthews.	1800	State tax, County, Add'l co. road.	3 60 5 40 1 80 10 80

St. Louis county, Oct. 12, 1853.

JOHN BLADY SMITH, *Collector.*

178 Received of C. J. Carpenter, fourteen 62-100 dollars, being the amount of State, county and road taxes for the year 1853, in St. Louis county as below detailed, including interests and costs.

Acres.	100ths.	Survey.	Section.	Township.	Range.	Lot.	Block.	Town or village.	Front.	Deep.	Description of real estate.	
25	arp.					9		Grand	Prai	rie.	M. Blanchard, E. Hall S. Matthew W. Lindell.	
												4 96
												9 46
												14 42
												25
												14 67

St. Louis county, Sept. 30, 1854.

JOHN BRADY SMITH,
By AXTELL, *Dep'y Collector.*

33. Received of C. J. Carpenter, thirty-three 60-100 dollars, being the amount of State, county and road taxes for the year 1854, in St. Louis county, on real estate as below detailed, including toll and personal property.

Acres.	100ths.	Survey.	Section.	Township.	Range.	Lot.	Block.	Additional town or village.	Front.	Deep.	Description of real estate.	Valuation.	Amount.	
28	03			45	7	10		Grand Prairie common field.			N. Hall, *et al*, E. schools, S. plank road, W. plank road.	4800	State tax---- ----	$ 9 60
													County---- ----	19 20
													Add'l co. road--	4 80
														33 60
														33 60
C.	P.													67 20

St. Louis County, Nov. 28, 1854.

JOHN BRADY SMITH, *Collector.*

179 *Rebuttal.*

Plaintiff put in evidence township map of U. S. surveys, and it is agreed that said map may be used before the Supreme Court of Missouri, and the Supreme Court of the United States, as a part of the record in this case without being inserted herein.

Plaintiff put in evidence deed of Louis Lafliche to David Desilet, as follows, dated Nov. 3, 1849.

Deed of Louis Lafliche to Desilets.

Know all men by these presents, that I, Louis Lafliche, of the county of St. Louis, State of Missouri, for and in condsideration of the sum of five hundred dollars to me in hand paid by David Desilets of the same place, the receipt whereof is hereby acknowledged, have revised, released and forever quitclaimed, and by these presents revise, release and forever quitclaim unto the said David Desilets, his heirs and assigns all my right, title, interest, claim and demand of, in and to the following desscribed tracts of land, to wit: A certain tract or lot of land lying and being situate in what is commonly called the Grand Prairie common fields of St. Louis county, containing one arpent in front by forty arpents in depth, bounded on the south by land confirmed to Pierre Barribeau; on the east by the eastern
180 boundary line of the Grand Prairie common field lots; on the north by claimant unknown, and on the west by the western line of said common field lots, it being the same lot confirmed by act of Congress of 13th June, 1812, to Benito Vasquez in virtue of his possession and cultivation thereof prior to 20th December, 1803. Also all my right, title and interest of, in and to a certain other tract of land in said Grand Prairie common fields, containing one arpent in front by forty arpens in depth, bounded on the south by land confirmed to said Louis Laroche's representatives; on the north by land confirmed to Pierre Barribeau; on the east by the eastern boundary line of said common fields; on the west by the western boundary line of said common fields; also my right, title, interest, claim and demand of, in and to all the estate, real and personal, rights, credits, moneys, titles, claims and demands, belonging to the estate of Pierre David Crotteau (alias David Corteau) deceased, legitimate son of Jean Baptiste Crotteau and Marie, his wife, who departed this life a few months ago in the city of St. Louis in the county aforesaid, wheresoever
181 said property may be situated or found due, owing, belonging or appertaining to said estate of the said Pierre David Crotteau, alias David Corteau. To have and to hold, use and enjoy the same, unto him, the said David Des Ilets, his hiers and assigns forever.

In witness whereof I have hereto set my hand and seal this 3d day of November in the year 1849.

[SEAL.] LOUIS LAFLECHE.

STATE OF MISSOURI, *County of St. Louis, ss*:

Be it remembered that Louis Lafleche, who is personally known to the undersigned justice of the peace, for the county aforesaid, to be the person whose name is subscribed to the foregoing deed, as party thereto, this day appeared before ma at the county aforesaid, and acknowledged that he executed the same for the purposes therein expressed.

Taken and certified this 3d day of November, 1849.

MANN BUTLER.
Justice of the Peace.

Filed and recorded Nov. 6, 1849.

STATE OF MISSOURI, *County of St. Louis, ss*:

I, the undersigned recorder in and for said county, certify that the foregoing is a true and correct copy of a deed from Louis
182 Lafleche to David Des Islets, as also of the certificate of acknowledgement and of the date of filing and recording thereof as fully as the same remains of record in my office, in book E, No. 5, p. 388.

Witness my hand and official seal this 24th Nov., 1857.

[SEAL.] C. KEEMLE, *Recorder.*
Per J. CONRAD, *Dep'y.*

183 Opinions of the recorder of land titles for the Missouri territory, as to claims entered under act 13 June, 1812, and proven before 1st January, 1814, as provided by the act of 3d March, 1813, comprehending the claims in the late district of Arkansas, which by act of 2d August, 1813, were permitted to be entered until January 1, 1814, and proven until 1 of July, 1814, together with the extensions of qualitiy provided by the 4th section of the act of 3d March, 1813, and confirmations under the act of 12th April, 1814.

Warrant or order of survey.	Survey.	Notice to the recorder, by whom.	Quantity claimed.	Where situated.	Poss'n, inhab'n and cult'n.	Opinions of the Recorder.
None.....	None	Represt's of Benito Vasquez.	F. 139. 40 arpens of land.	Big Prairie of St. Louis.	10 yrs. poss'n and imp's prior to 1803.	Granted 40 apens, survey, acc't to poss'n.

OFFICE OF THE UNITED STATES RECORDER OF LAND TITLES, *St. Louis*, 31*st May*, 1866.

I certify that the above is correctly transcribed from page 1 of book No. 1, being of the five small books in this office, with the following endorsement on the first, and also on the fifth book; all of which said five books are apparently in the handwriting of Frederick Bates, and are designated as follows, to wit: "These five small books are originals in the handwriting of the undersigned, being his decisions on land claims, since the adjournment of the late board. They are arranged and fairly transcribed for report to the Commissioner of the General Land Office, but not yet recorded in the books, because they have no authority till sanctioned by government. St. Louis, Nov. 12, 1815.

FREDERICK BATES, *Recorder of Land Titles.*"

[U. S. revenue stamp.]

FREDERICK MOSBERGER, *Recorder.*

184 At the time the said confirmation was offered defendant objected to the reading of the same on the ground that it was not rebutting evidence; and 2d, that it was and is irrelative and immaterial in this case. But the court overruled defendants objection, and defendant at the time duly excepted to the decision of the court.

Plaintiff then called Henry W. Williams, the party in whose name this suit is prosecuted.

The defendant objected to the examination of Williams as a witness in this case, on the ground that he is a party to the record. But the court overruled the defendants objection, and decided that said Williams was a competent witness in the case. And defendant at the time duly excepted to the decision of the court.

Testimony of H. W. Williams.

Henry W. Williams then testified, as follows: I recollect the Lacroix tract of land. It is bounded on the north by Barribeau; south by Pine st. road. In 1849, I purchased 25 arpens of the east end of the Lacroix tract of Joseph Cofield. He called me out, and introduced me to a man he said was his tenant; and that tenant attoned to me. The 25 arpens I bought commenced 12 arpens west of the east line of the Lacroix tract. There was at that time a small
185 house on the 12 arpens which lay to the east of the 25 I purchased. There was a small run or gully through the eastern part of the 25 arpens I purchased. I sold out to Barton O. Churchill & Chamberlain in 1850, and introduced them to all the tenants who had attoned me. After that I paid no attention to the matter until after the Olive st. road was opened. I then found Dr. Carpenter, the defendant, in possession. The tenant who occupied the 12 arpens on the east of the 25 I had purchased, told me he was in possession as tenant of Townsend

Defendant objected at the time to the witness, Williams, stating what the tenant told him, on the ground that the same was hearsay; but the court overruled defendant's objection, and defendant at the time duly excepted.

Judge Townsend went to California in 1849 or 1850. M. L. Gray was attorney-in-fact of Townsend. About the year 1854, I bought, through the agency of M. L. Gray, the 12 arpens at the east end of the Lacroix tract. There were, at that time, enclosures on the land of small portions. The enclosures were brush fences. The houses, or shanties, were small and temporary. One was built partly of brick. The first house was about 9 arpens west of the east line of the Lacroix tract, and the enclosure about it enclosed about 2
186 acres. On the east of the tract there was a brush fence. The first I ever knew of any possession of Cofield out there, was in 1849. At that time David Desilet had possession of the Vasquez tract.

On cross-examination, Williams said:

There was a brush fence at the east end of the 12 arpens, extending 3 or 4 arpens north and south, when I was out there with Cofield.

It was only a short time, a day or so, before his deed was made to me. I went about the tract with Cofield. I don't recollect that there were more than two tenants on the tract.

Melvin L. Gray was called by plaintiff in rebuttal:

Testimony of M. L. Gray.

The defendant objected to the examination of said Gray, on the ground that it appeared that this suit was prosecuted for his direct benefit, and it was admitted by counsel for plaintiff that the suit is prosecuted for the benefit of the said Gray. The court overruled the objection of defendant to the competency of said Gray, and allowed him to testify; and defendant at the time duly excepted.

Said M. L. Gray testified as follows:

I first knew the land in controversy in April, 1849. In that year I went on to the Lacroix tract with J. B. Townsend, and saw
187 the person who then occupied it. Townsend told the tenant in my presence that I would represent him, Townsend, and see to the land for him. This was satisfactory to the tenant. I did not see the tenant again. I did not see but one tenant. He was living in a small brick house, on 12 arpens, just down the slope of the hill to the west, and just east of the gully or run. He had two or three acres enclosed. He was a German, and middle-aged. Townsend showed him the lease, and he admitted he was tenant. That lease was renewed in my office in summer of 1850. The first I knew of Carpenter's being in possession, I heard that he had fenced the land in. It is my impression that one half of the width of Olive st. was taken from south part of Lacroix tract.

On cross-examination the witness said:

When I went out there with Townsend, in 1849, I did not know the boundary lines of any of the common field lots. The Olive st. road was not laid out or opened when I went out there in 1849. There were bushes all over the land around about there, except where the small spaces of cultivation. I knew nothing as to what tract the tenant was on, except what Townsend said, but what I have since learned, and with reference to the location of the Olive st. road, I think the tenant of Townsend, I said, was on the Lacroix tract. I do not remember the slope of the enclosure on the brow of the
188 hill. It was the only one on the 12 arpents at east end of Lacroix tract. The house of the German tenant was near the Barribeau tract; close to it; perhaps part of it was over the line.

Testimony of C. D. McClure.

C. D. McClure, called by defendant, testified as follows:

I know the location of the land in controversy in this suit, and also the Barribeau tract. I owned an interest of $\frac{3}{4}$ in the last named tract. I have heard the testimony of Henry W. Williams and M. L.

Gray in this case. The houses and tenants they spoke of were on the Barribeau tract, and not on the lands in controversy. The enclosure of those tenants extended over a little way on the Lacroix tract. I saw C. J. Carpenter running out the lines with a surveyor of the land in controversy. This was in 1851. He put up his fences soon after that.

The foregoing was all the evidence offered or heard in the case.

After the court rendered its finding, and gave judgment for
189 plaintiff, the defendant in proper time filed his motion for a re-hearing and new trial, as follows:

In the St. Louis Circuit Court.

Motion for new trial.

HENRY W. WILLIAMS, pl'ff.
vs.
CHARLES J. CARPENTER, defendant.

And now comes the said defendant and moves the court to set aside the verdict, judgement and decree made by the court in this case, and grant a new trial for the following reasons:

First. That the court improperly admitted illegal and incompetent testimony offered by plaintiff.

Second. That the court excluded legal and competent testimony offered by defendant.

Third. That the findings and decree of the court was contrary to law and contrary to evidence, and against the weight of evidence.

Fourth. That the finding and decree should have been for the defendant upon the whole case.

KRUM, GLOVER & SHEPLEY,
Atty's for Defendant.

Motion for new trial overruled.—Appeal to gen'l term allowed.

The court overruled said motion, and refused a re-hearing and new trial; and defendant at the time duly excepted to the decision
190 of the court, and prayed an appeal to the general term, which was duly allowed.

And now, that all the matters aforesaid may become of record, the defendant tenders this his bill of exceptions, and asks that the same may be signed and made of record, which is done.

JAMES C. MOODY, *Judge.*

And afterwards, to wit: at the February term, 1867, at the general term of the said Circuit Court, the following further proceedings were had, to wit:

Trial and decree.

FRIDAY, *March* 1, 1867.

It appearing by the judge's notes that this cause was tried by the court without any consent being made or entered into by the parties to that effect, it is ordered that the judgement in the above cause, entered Dec. 3, 1866, be amended by striking out the words "by consent of parties hereto," and that the following judgement be entered in said cause as of that day, to wit:

And now at this day come the parties aforesaid, by their
191 respective attorneys and solicitors, and, the proofs and evidence having been duly heard in this suit by the court, the court excludes as evidence in this suit on the hearing, the minutes of the evidence taken before the recorder, Theodore Hunt, as incompetent and irrelevant; and the court thereupon order and decree as follows:

1st. That there was not any Louis Lacroix inhabiting St. Louis, now city of St. Louis, prior to the 20th day of December, 1803, or on the 13th day of June, 1812, or on the 3d day of March, 1825, qualified to claim the common field lot known as United States survey, No. 1,664 in the Grand Prairie common fields of St. Louis, confirmed by the act of Congress of the 13th day of June, 1812, entitled "An act making further provision for settling the claims to land in the territory of Missouri," and that no person by the name of Louis Lacroix cultivated said field lot in the Grand Prairie common field prior to the 26th day of December, 1803, or at any other time.

2d. That there was a Joseph Lacroix who came within the terms of said act of Congress of the 13th day of June, 1812, and
192 that said Joseph Lacroix was an inhabitant of St. Louis, and cultivated said common field lot, now known as United States survey, No. 1,664, in the Grand Prairie common fields of St. Louis, prior to the 20th day of December, 1803; and that said Joseph Lacrox continued to be an inhabitant of St. Louis until the year 1832; and that the said Joseph Lacroix claimed the said common field lot before the recorder of land titles, on the 3d day of March, 1825, and was the same person to whom the said recorder of land titles, on the 3d day of March, 1825, issued the certificate of confirmation by the name of Louis Lacroix; and that said Joseph Lacroix was then and there entitled to the benefit of the said certificate of confirmation.

3d. That said Joseph Lacroix was seized in fee simple of said common field lot, now known as United States survey, No. 1,664, on the 13th day of June, 1812, by power of said act of Congress of the 13th day of June, 1812; that said Joseph Lacroix died in the year 1832, leaving as his heirs at law the following legitimate children, to wit: Marie Louise, who married John Eymer; Therese, who married

Joseph Montaigne; Julie, who married Savany Ruelle; Marie, who married August Guibord; Francois Lacroix and Basil Lacroix;
193 that the said Basil Lacroix died shortly after his father, intestate and unmarried; and that all the title, right, estate, and property of said Joseph Lacroix, and of his said heirs at law, in and to the twelve arpens of land sued for, in the form of a parallelogram, on the eastern end of said common field lot, now known as the United States survey, No. 1,664, in the Grand Prairie common fields of St. Louis, has passed to and vested in Henry W. Williams, in fee simple, prior to the time of the filing of the original petition in this case, to wit, on the 21st day of February, 1855, by virtue of the title deeds set forth in plaintiff's amended petition and read in evidence on the hearing of this cause; and that said Williams, since the filing of the said amended petition in this cause, has conveyed in fee simple to the co-plaintiffs, Melvin L. Gray and Sandford B. Kellog, all of the said 12 arpens of land sued for, that is lying west of Grand avenue; and said Gray and Kellogg are seized thereof in fee simple, as tenants in common; and all of the said twelve arpens of land sued for, lying east of Grand avenue, in the city of St. Louis, the said Williams is now seized in fee simple.

4th. That the plaintiff grantors, Joseph B. Cofield, James B. Townsend, and their tenants, occupied and possessed the said
194 premises sued for, in the years 1848 and 1849, and thereby prevented the running of the statute of limitations in this cause; and that the plaintiffs, as grantors by deraignment of title of the heirs-at-law of Joseph Locrois, as aforesaid, are entitled to recover the possession of the 12 arpens of land described in plaintiff's petition, of and from the defendant; and the court doth further find the rents and profits of the said land sued for, from the commencement of this suit to this day, to be one thousand dollars, and the monthly value thereof to be fifty dollars; for which possession, rents, and profits, and monthly value and costs, the plaintiffs are entitled to judgment and execution against the defendant, with costs.

And afterwards, at the February term, 1867, at the general term thereof, the following further proceedings were had, to wit:

Appeal continued.

FRIDAY, *March* 29, 1867.

It is ordered by the court that the appeal herein be continued.

And afterwards, at the April term, 1867, at the general term thereof, the following further proceedings were had, to wit:

195 *Appeal continued.*

WEDNESDAY, *April* 16, 1867.

By consent of parties, it is ordered by the court that the appeal herein be continued.

And afterwards, at the same term, the following further proceedings were had, to wit:

App'l cont'd.

THURSDAY, *June* 27, 1867.

It is ordered by the court that the appeal herein be continued until the next term, under advisement.

And afterwards, at the October term, 1867, at the general term thereof, the following further proceedings were had, to wit:

Appeal continued.

MONDAY, *October* 21, 1867.

By consent of parties it is ordered by the court that the appeal herein be continued.

And afterwards, at the same term, the following further proceedings were had:

Appeal continued.

FRIDAY, *November* 29, 1867.

It is ordered by the court that the appeal herein be continued.

And afterwards, at the December term, 1867, at the general term thereof, the following further proceedings were had, to wit:

Judgment affirmed.

THURSDAY, *January* 20, 1868.

Now come the parties, by their respective attorneys, and
196 the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgement rendered herein by the court at special term, be in all things affirmed, and stand in full force and effect, and that the plaintiff recover of the defendant the costs of this proceeding, and that execution issue therefor.

And afterwards, at the same term, the following further proceedings were had, to wit:

Bill of ex'ns, aff't for appeal, and appeal bond filed.

SATURDAY, *February* 1, 1868.

Now comes the defendant, by his attorney, and files his bill of exceptions, and also an affidavit for an appeal; and on his motion it is ordered by the court that an appeal be allowed him to the Supreme Court from the judgment herein rendered. He therefore files an appeal bond, which is approved by the court.

Which bill of exceptions, affidavit for appeal, and appeal bond, are in the words and figures following, to wit:

Be it remembered that upon the trial and hearing of this cause, at general term, upon the bill of exceptions and pleadings, and the record, as the same came up from special term, the judgment
197 of special term was affirmed; to which defendant, at the time, excepted; and prays the court to sign this his bill of exceptions, which is done.

SAM'L REBER, *Pr. Judge.*

Chas. J. Carpenter, defendant in this behalf, on his oath says: That the appeal in this cause is not made for vexation or delay, but because affiant believes that the defendants are injured and aggrieved by the judgement herein.

C. J. CARPENTER.

Subscribed and sworn to before me, this 1st day of February, 1868.

J. LEWIS, *Cl'k.*

Know all men by these presents that we, Charles J. Carpenter, as principal, and Joseph H. Locke and James Lupe, as sureties, are held and firmly bound unto Henry W. Williams, in the sum of four thousand dollars, for the payment of which, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly, by these presents.

Sealed with our seals, and dated at St. Louis, this 1st day of February, 1868.

198 The condition of the above obligation is such, that whereas said Carpenter has appealed from the judgement rendered against him and in favor of said Williams, in the St. Louis Circuit Court, for the sum of one thousand dollars, and fifty dollars monthly rents: Now if the said appellant will prosecute his appeal with due diligence to a decision in the Supreme Court, and shall perform such judgement as shall be given by the Supreme Court, and such as the Supreme Court shall direct the St. Louis Circuit Court to give, and if the judgement, or any part thereof, be affirmed, will comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be rendered against him by the Supreme Court, then this obligation shall be void; otherwise it shall remain in full force and effect.

[SEAL.] C. J. CARPENTER.
[SEAL.] JAMES LUPE.
[SEAL.] JOS. H. LOCKE.

Approved in open court, Feb'y 1st, '68.

J. LEWIS, *Cl'k.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, John Lewis, clerk of the Circuit Court of St. Louis
199 county, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record and proceed-

ings in the above-entitled cause, as fully as the same remain of record in my office.

In testimony whereof I hereto set my hand and affix the seal of the said court, at office, in the city of St. Louis, this 25th day of February, A. D. eighteen hundred and sixty-eight.

[SEAL.] JOHN LEWIS, *Clerk.*

And afterwards, to wit, on the fifth day of March, A. D. 1868, the following assignment of errors was filed in the clerk's office of said Supreme Court, to wit:

In Supreme Court, March term, 1868.

Assignment of error.

WILLIAMS *et al.*, respondents,
vs.
CARPENTER *et al.*, appellants.

And now come the said appellants and say that in the record and proceedings of the court below, in the above-entitled cause, there is manifest error, and for error said appellants assign the follow-
200 ing, to wit:

1. That the court admitted illegal and improper testimony offered by respondents.

2. That the court rejected proper and legal testimony offered by appellants.

3. That the court gave to the jury improper and illegal instructions.

4. That the court refused to give to the jury proper and legal instructions offered by appellants.

5. That the verdict was against the evidence.

6. That the verdict was against law.

7. That the verdict was against both law and evidence, and against the law under the evidence.

8. That the verdict was against the weight of evidence.

9. That the judgment was rendered in favor of the respondents when it should have been rendered for the appellants.

10. That said court overruled the motion for a new trial made by appellants.

GLOVER & SHEPLEY,
KRUM, DECKER & KRUM,
For Appellants.

201 And now come the respondents, and for joinder in error say, that there is no error in the record and proceedings of said Circuit Court in said cause, as assigned by said appellants, and say there was no error in said record and proceedings, and pray for an affirmance of said judgment.

WHITTELSEY,
B. A. HILL, *for Resp'd'ts.*

And afterwards, to wit, at the March term, A. D. 1868, of said Supreme Court, the following proceedings were had in said cause, to wit:

Argument progresses.

HENRY W. WILLIAMS, respondent,
vs.
CHARLES J. CARPENTER, appellant.

MONDAY, *March* 23*d*, 1868.

Now again come the parties aforesaid, by their respective attorneys, whereupon the argument of this cause progresses, and not being finished, is laid over till to-morrow, the 24th instant.

Stipulation amending record filed.

(Which stipulation is given at beginning of transcript.)

202 And afterwards, at the same term of said court, the following proceedings were had, to wit:

Submission.

HENRY W. WILLIAMS, respondent,
vs.
CHARLES J. CARPENTER, appellant.

TUESDAY, *March* 24*th*, 1868.

Now again come the parties aforesaid, by their respective attorneys, whereupon the argument of this cause progresses, and being finished, the same is submitted to the court.

Appellant's brief and brief of respondents filed.

And afterwards, at the same term of said Supreme Court, the following judgment of affirmance was rendered in said cause, to wit:

Appeal from St. Louis Circuit Court.

Judgment of affirmance.

HENRY W. WILLIAMS, respondent,
vs.
CHARLES J. CARPENTER, appellant.

MONDAY, *April* 6*th*, 1868.

Now again come the parties aforesaid, by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the St. Louis Circuit Court be in all things affirmed and stand in full force and effect, and that the said respondent recover of the said appellant their costs and charges herein expended, and have execution therefor.

Opinion filed.

And afterwards, at the same term of said court, the following proceedings were had, to wit:

HENRY W. WILLIAMS, respondent,
vs.
CHARLES J. CARPENTER, appellant.

SATURDAY, *April 11th*, 1868.

Writ of error to Supreme Court United States allowed. James Lupe and James H. Locke sworn and approved as securities. Bond filed, and certificate of presiding judge signed and filed.

Which certificate and bond are in the words and figures following, to wit:

204 Supreme Court State of Missouri, March Term, 1868.

Certificate of presiding judge.

HENRY W. WILLIAMS, respondent,
vs.
CHARLES J. CARPENTER, appellant.

It is hereby certified that, on the hearing of the above-entitled cause before the Supreme Court of the State of Missouri, at the March term thereof, in the year 1868, the question arose upon the record in said cause, whether the plaintiff below (respondent in this court) acquired or had a superior or better title to the land in question in virtue of the act of Congress approved June 13, 1812, and other acts of Congress enacted subsequent thereto, than the title to the same land set up and claimed by the defendant below (appellant in this court,) who claimed said land under the same acts of Congress. And the decision of this question by this court was adverse to the said respondent, and against his claim and title to said land under said acts of Congress; and the said decision was necessary to the determination of said cause.

205

DAVID WAGENR,
Presiding Judge Sup. Ct. Mo.

Bond.

Know all men by these presents, that we, Charles J. Carpenter, as principal, and James Lupe and James H. Locke, are held and firmly bound unto Henry W. Williams in the full and just sum of three thousand dollars, to be paid to the said Henry W. Williams, his heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 10th day of April, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas lately, at the March term, 1868, of the Supreme Court of the State of Missouri, in a suit depending in said court between

Charles J. Carpenter, plaintiff in error, against Henry W. Williams, defendant in error, judgment was rendered against the said Charles J. Carpenter; and the said Charles J. Carpenter having obtained a writ of error of the said court to reverse the judgment in the
206 aforesaid suit and a citation directed to the said Henry W. Williams, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, the first Monday of December next. Now the condition of the above obligation is such, that if the said Charles J. Carpenter shall prosecute such writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] C. J. CARPENTER.
[SEAL.] JAMES LUPE.
[SEAL.] JAS. H. LOCKE.

Sealed and delivered in presence of—

Approved by DAVID WAGNER,
Presiding Judge Sup. Ct. Mo

STATE OF MISSOURI, *ss*:

I, O. T. Fishback, clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify the above and foregoing to be a full, true and complete copy of the record and proceedings in the
207 above-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said Supreme Court this tenth day of August, A. D. 1868, at office in the city of St. Louis.

[SEAL.] O. T. FISHBACK, *Clerk*,
By E. P. McCARTY, *Dp.*

[5-ct. U. S. rev. stamp, cancelled.]